S. HRG. 101-687

REINSTATING OIL AND GAS LEASE LA 033164 AND THE STOCK RAISING HOMESTEAD ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON MINERAL RESOURCES DEVELOPMENT AND PRODUCTION

OF THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

S. 1805 AND H.R. 3727

TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO REINSTATE OIL AND GAS LEASE LA 033164

S. 1908

TO AMEND THE STOCK RAISING HOMESTEAD ACT TO PROVIDE CERTAIN PROCEDURES FOR ENTRY ONTO STOCK RAISING HOMESTEAD ACT LANDS, AND FOR OTHER PURPOSES

H.R. 737

TO AMEND THE STOCK RAISING HOMESTEAD ACT TO RESOLVE CERTAIN PROBLEMS REGARDING SUBSURFACE ESTATES, AND FOR OTHER PURPOSES

MARCH 9, 1990

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REINSTATING OIL AND GAS LEASE LA 033164 AND THE STOCK RAISING HOMESTEAD ACT

FRIDAY, MARCH 9, 1990

U.S. SENATE, SUBCOMMITTEE ON MINERAL RESOURCES, DEVELOPMENT AND PRODUCTION, COMMITTEE, ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 1:03 p.m., in room SD-366, Dirksen Senate Office Building, Hon. Jeff Bingaman, presiding.

OPENING STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR FROM NEW MEXICO

Senator BINGAMAN. We will go ahead and start the hearing, and I see we have Senator Inouye here as the first witness. Let me go through a very short opening statement and then call upon him to make any statement he would like to.

This afternoon the Subcommittee on Mineral Resources Development and Production is hearing testimony on S. 1908 and H.R. 737, legislation to amend the Stock Raising Homestead Act; and S. 1805 and H.R. 3727, bills to reinstate an oil and gas lease in California. I want to welcome all the witnesses, but particularly I would like to welcome, of course, the two that we have from New Mexico here. Bud Eppers and Charlie Roybal are here to testify and we are very pleased about that.

There are approximately 70 million acres of land that were patented under the Stock Raising Homestead Act. Under this act, lands considered suitable for livestock grazing were available for patenting with the mineral estate expressly reserved to the United States. According to the Bureau of Land Management, approximately 50 prospecting or mining operations are being conducted on 17,000 claims located on lands patented under this Stock Raising Homestead Act. Of these operations, about 30 involve negotiated agreements between the mineral operator and the surface owner, with about 20 requests per year for BLM to determine bond amounts. In New Mexico, which has the second largest amount of Stock Raising Homestead Act lands, with roughly 15 million acres, there are approximately 6,500 to 7,000 mining claims located on the lands.

The policy objectives of the Stock Raising Homestead Act and other similar legislation certainly were laudable. Congress wanted to encourage development of the Nation's livestock industry while

at the same time retaining Federal title to the mineral estate so as to ensure the continued availability of important minerals.

Unfortunately, some inherent conflicts arise when the same land is used both for raising livestock and mineral exploration and development. Usually these conflicts are worked out between the surface owner and the miner in a reasonable fashion and current law does provide certain procedures in case of conflict. However, there are still conflicts that arise from these split estates, and I believe that current law does not address it adequately.

S. 1908 and H.R. 737 amend the Stock Raising Homestead Act to provide additional procedures for gaining access to and undertaking mining activities on these lands. In introducing this, I am seeking to strike an appropriate balance between the rights of the surface owners and the rights of miners on these particular lands. And I know that today's testimony will help us to strike that balance.

We are also here to take testimony on S. 1805 and H.R. 3727, which are bills that provide procedures for reinstating an oil and gas lease that has been terminated by the Department of the Interior for failure to pay the rental due on the lease in a timely fashion.

Let me just take care of a couple of administrative details. Obviously, after Senator Inouye has completed his comments, we will go to the other witnesses, and at that time, I would just urge that they summarize their statements.

At this point, since Senator Inouye is here and ready to testify, let me go directly to him and welcome him to the Committee and urge that he make any statement he would like at this point.

[The prepared statement of Senator Wallop and the texts of the legislation follow:]

Malcolm Wallop

STATEMENT OF
SENATOR MALCOM WALLOP
STOCK RAISING HOMESTEAD ACT AMENDMENTS
March 9, 1990

MR. CHAIRMAN, THANK YOU FOR HAVING THIS HEARING TODAY ON LEGISLATION TO RESOLVE THE "SPLIT-ESTATE" PROBLEM BETWEEN RANCHERS AND HARD ROCK MINERS.

AT PRESENT, THE LAW FAILS TO ADDRESS THE CONTROVERSY ARISING WHEN RANCHERS AND MINERS SEEK TO USE THE SAME LAND-- USES, I MIGHT ADD, WHICH ARE OFTENTIMES MUTUALLY EXCLUSIVE. THIS LEGISLATION ESTABLISHES A SCHEME TO AVOID THIS KIND OF "RANGE WAR."

AS YOU KNOW, MR. CHAIRMAN, I AM A RANCHER, SO I AM CONCERNED ABOUT PROTECTING RANCHERS DURING PROSPECTING ON THESE CLAIMS, ESPECIALLY BECAUSE WYOMING HAS 18 MILLION ACRES OF STOCK RAISING HOMESTEAD ACT LANDS, ON WHICH THERE ARE 3,000 UNPATENTED MINING CLAIMS.

UNDER THIS LEGISLATION, THE PROSPECTOR MAY ENTER THE LANDS TO PROSPECT FOR MINERALS ONLY AFTER FIRST GIVING TEN DAYS NOTICE TO THE RANCHER. MORE IMPORTANTLY, WHEN ON THE LAND, THE PROSPECTOR CANNOT CONSTRUCT ANY ROAD, USE ANY EXPLOSIVES, OR USE ANY BULLDOZERS.

AFTER THE PROSPECTING PHASE, THE MINER SEEKING TO EXPLORE AND DEVELOP THE CLAIM WOULD NEED THE CONSENT OF THE SURFACE OWNER. ABSENT THAT, THE INTERIOR DEPARTMENT COULD APPROVE DEVELOPMENT IF THE MINER POSTED BOND, PREPAID A SURFACE USE FEE, AND SUBMITTED AN ACCEPTABLE MINING PLAN.

THIS LEGISLATION PROPOSES A REASONABLE SOLUTION TO THE CONFLICT. I AM DELIGHTED TO HEAR FROM INTERESTED PARTIES TODAY, AND I AM CONFIDENT THAT THE SENATE WILL APPROVE THIS LEGISLATION IN THE NEAR FUTURE. THANK YOU.

II

101ST CONGRESS
1ST SESSION

S. 1805

To authorize the Secretary of the Interior to reinstate oil and gas lease LA 033164.

IN THE SENATE OF THE UNITED STATES

OCTOBER 27 (legislative day, SEPTEMBER 18), 1989

Mr. INOUYE (for himself and Mr. CRANSTON) introduced the following bill; which was referred to the Committee on Energy and Natural Resources

---

A BILL

To authorize the Secretary of the Interior to reinstate oil and gas lease LA 033164.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is hereby directed to treat United States oil and gas lease LA 033164 as if it had been issued under section 17(c) of the Mineral Leasing Act (30 U.S.C. 226(c)), for purposes of reinstatement only.

SEC. 2. Within thirty days after the enactment of this Act, the Secretary of the Interior shall give written notice to the last lessee of record for lease LA 033164 that said lessee may petition for reinstatement in accordance with the proce-

dures and conditions in subsections 31 (d) and (e) of the Mineral Leasing Act (30 U.S.C. 188 (d) and (e)). The last lessee of record shall have sixty days from the date of the Secretary's notice to file such petition. If the Secretary determines that lease LA 033164 qualifies for reinstatement pursuant to subsection 31(d) (30 U.S.C. 188(d)), in all respects except for compliance with the deadline imposed by that provision, the Secretary shall reinstate the lease pursuant to the conditions of subsection 31(e) of the Mineral Leasing Act (30 U.S.C. 188(e)).

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I

101ST CONGRESS
1ST SESSION

H. R. 3727

To authorize the Secretary of the Interior to reinstate oil and gas lease LA 033164.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 17, 1989

Mr. AKAKA introduced the following bill; which was referred to the Committee on Interior and Insular Affairs

---

A BILL

To authorize the Secretary of the Interior to reinstate oil and gas lease LA 033164.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is hereby directed to treat United States oil and gas lease LA 033164 as if it had been issued under section 17(c) of the Mineral Leasing Act (30 U.S.C. 226(c)), for purposes of reinstatement only.

SEC. 2. Within thirty days after the enactment of this Act, the Secretary of the Interior shall give written notice to the last lessee of record for lease LA 033164 that said lessee may petition for reinstatement in accordance with the proce-

dures and conditions in subsections 31 (d) and (e) of the Mineral Leasing Act (30 U.S.C. 188 (d) and (e)). The last lessee of record shall have sixty days from the date of the Secretary's notice to file such petition. If the Secretary determines that lease LA 033164 qualifies for reinstatement pursuant to subsection 31(d) (30 U.S.C. 188(d)), in all respects except for compliance with the deadline imposed by that provision, the Secretary shall reinstate the lease pursuant to the conditions of subsection 31(e) of the Mineral Leasing Act (30 U.S.C. 188(e)).

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II

101ST CONGRESS
1ST SESSION

S. 1908

To amend the Stock Raising Homestead Act to provide certain procedures for entry onto Stock Raising Homestead Act lands, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 17 (legislative day, NOVEMBER 6), 1989

Mr. BINGAMAN introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To amend the Stock Raising Homestead Act to provide certain procedures for entry onto Stock Raising Homestead Act lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MINERAL ENTRY UNDER STOCK RAISING HOMESTEAD ACT.

(a) MINERAL ENTRY UNDER THE STOCK RAISING HOMESTEAD ACT.—Section 9 of the Act of December 29, 1916, entitled "An Act to provide for stock-raising homesteads, and for other purposes" (39 Stat. 862; 43 U.S.C. 299) is amended by adding the following at the end thereof:

"(b) PROSPECTING; NOTICE OF INTENTION TO LOCATE; EXPLORATION, DEVELOPMENT, AND PRODUCTION.—

"(1) PROSPECTING; LOCATION OF CLAIMS.—Notwithstanding subsection (a), no person other than the surface owner may enter lands subject to this Act to prospect for minerals or to locate a claim under the mining laws of the United States on such lands without—

"(A) filing a notice of intention to locate a claim pursuant to paragraph (2); and

"(B) providing notice to the surface owner pursuant to paragraph (3).

Any person who has complied with paragraphs (2) and (3) with respect to any such lands may, during the authorized prospecting period, enter such lands to prospect for minerals, with minimal surface disruption, and to locate a mining claim on such lands. During such period no such person may construct any road, use any explosives, or use any mechanical earth moving equipment on such lands. With respect to any lands for which a notice is filed under paragraph (2), the term 'authorized prospecting period' means the period beginning ten days after notice is provided under paragraph (3) with respect to such lands and ending with the ex-

piration of the sixty-day period referred to in paragraph (2).

"(2) NOTICE OF INTENTION TO LOCATE A CLAIM.—Any person seeking to prospect for minerals or to locate a mining claim on lands subject to this Act shall file with the Secretary of the Interior a notice of intention to locate a claim on the lands concerned. The notice shall be in such form as the Secretary of the Interior shall prescribe. The notice shall contain the name and mailing address of the person filing the notice and a legal description of the lands to which the notice applies. The legal description shall be based on the public land survey or on such other description as is sufficient to permit the Secretary to record the notice on the Secretary's land status records. Whenever any person has filed a notice under this paragraph with respect to any lands, during the sixty-day period following the date of such filing, no other person (including the surface owner) may—

"(A) file such a notice with respect to any portion of such lands;

"(B) prospect for minerals or locate a mining claim on any portion of such lands; or

"(C) acquire any interest in any portion of such lands pursuant to section 209 of the Federal

Land Policy and Management Act of 1976 (43 U.S.C. 1719).

The Secretary may establish such fees as may be necessary to cover the administrative costs of processing notices filed under this paragraph.

"(3) NOTICE TO SURFACE OWNER.—Any person who has filed a notice of intention to locate a claim under paragraph (2) for any lands subject to this Act shall provide written notice by registered or certified mail to the surface owner (as evidenced by local tax records) of the lands covered by the notice under paragraph (2). The notice shall be provided at least ten days before entering such lands and shall contain each of the following:

"(A) A brief description of the proposed prospecting activities.

"(B) A map and legal description of the lands to be subject to prospecting.

"(C) The name, address, and phone number of the person managing such activities.

"(D) A statement of the dates on which such activities will take place.

"(4) ACREAGE LIMITATIONS.—The total acreage covered at any time by notices of intention to locate a claim under paragraph (2) filed by any person and by

affiliates of such person may not exceed six thousand four hundred acres of lands subject to this Act in any one State and one thousand two hundred and eighty acres of such lands for a single surface owner. For purposes of this paragraph, the term 'affiliate' means, with respect to any person, any other person which controls, is controlled by, or is under common control with, such person.

"(5) MINERALS COVERED.—This subsection applies only to minerals not subject to disposition under the Mineral Leasing Act (30 U.S.C. 181 and following), the Geothermal Steam Act of 1970 (30 U.S.C. 100 and following), or the Act of July 31, 1947, commonly known as the Materials Act of 1947 (30 U.S.C. 601 and following).

"(c) MINERAL EXPLORATION, DEVELOPMENT AND PRODUCTION.—

"(1) IN GENERAL.—Notwithstanding subsection (a) of this section, except for prospecting in accordance with subsection (b), no person may conduct any mineral exploration, development, or production activities on lands subject to this Act without the written consent of the surface owner thereof unless the Secretary has authorized the conduct of such activities under paragraph (2).

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"(2) AUTHORIZED MINING OPERATIONS.—The Secretary may authorize a person to conduct mineral exploration, development, and production activities on lands subject to this Act without the consent of the surface owner thereof only under the following conditions—

"(A) BOND.—Before the Secretary may authorize any person to conduct mineral exploration, development, or production activities, the Secretary shall require such person to post a surety bond to be held by the United States, or to provide such other type of financial guarantee satisfactory to the Secretary to insure (i) reclamation of the surface, (ii) payment to the surface owner as compensation for damages to crops and tangible improvements of the surface owner, and (iii) compensation for loss of income by the surface owner due to loss or impairment of grazing, or other uses of the land by the surface owner, to the extent that reclamation required by the plan of operations would not permit such uses to continue at the level existing prior to the mineral exploration, development, and production activities.

"(B) PLAN OF OPERATIONS.—Before the Secretary may authorize any person to conduct

mineral exploration, development, or production activities, the Secretary shall require such person to submit a plan of operations satisfactory to the Secretary and which complies with this subparagraph. The plan shall contain such terms and conditions as the Secretary determines necessary. The conditions shall include, at a minimum, procedures for (i) reclamation of the surface, (ii) minimization of damages to crops and tangible improvements of the surface owner, and (iii) minimization of disruption to grazing or other uses of the land by the surface owner. The plan shall provide for payment of a fee for the use of the surface lands. The fee shall be paid to the surface owner by the person submitting the plan of operations. The fee shall be paid in advance of any mineral exploration, development, or production activities or at such other time or times as may be agreed to by the surface owner and the person conducting such activities. The Secretary shall establish the surface use fee, taking into account the acreage involved and the degree of potential disruption to existing surface uses (including loss of income to the surface owner due to the loss or impairment of existing surface uses for the dura-

tion of the mineral exploration, development, and production activities). The Secretary shall provide the plan to the surface owner at least sixty days before the Secretary determines that the plan complies with this subparagraph. The surface owner may submit comments and recommend plan modifications to the Secretary during such sixty-day period.

The Secretary shall suspend or revoke the authorization under this paragraph whenever the Secretary determines, on the Secretary's own motion or on a motion made by the surface owner, that the person conducting mineral exploration, development, or production activities is in substantial noncompliance with the terms and conditions of the plan and failed to remedy the violation after notice from the Secretary within the time required by the Secretary.

"(3) DAMAGES FOR FAILURE TO COMPLY.—Whenever the surface owner of any land subject to this Act has suffered any damages or loss referred to in paragraph (2)(A), if such damages or loss results—

"(A) from any mineral exploration, development, or production activities undertaken without the consent of the surface owner under paragraph

(1) or an authorization by the Secretary under paragraph (2), or

"(B) from the failure of the person conducting mineral exploration, development, or production activities to remedy to the satisfaction of the Secretary any substantial noncompliance with the terms and conditions of a plan under paragraph (2)(B) pursuant to a notice from the Secretary under the last sentence of paragraph (2), the surface owner may bring an action in the appropriate United States district court for, and the court may award, treble damages. Such damages shall be reduced by the amount of any compensation which the surface owner has received (or is eligible to receive) pursuant to the surety bond or other financial guarantee required under paragraph (2)(A). The surface owner of such lands may also bring an action in the appropriate United States district court for treble damages against any person undertaking any minerals prospecting activity on such lands in violation of any requirement of paragraph (1).

"(4) PAYMENT OF DAMAGES.—The surface owner of any land subject to this subsection may petition the Secretary for payment of all or any portion of

a surety bond or other financial guarantee required under paragraph (2)(A) as compensation for damages and losses referred to in paragraph (2)(A). Pursuant to such a petition, the Secretary may use such bond or other guarantee to provide compensation to the surface owner for such damages.

"(5) BOND RELEASE.—The Secretary shall release the surety bond or other financial guarantee required under paragraph (2)(A) upon the successful completion of all requirements pursuant to the plan approved under paragraph (2)(B) or at such earlier date as may be agreed to by the surface owner.

"(6) MINERALS COVERED.—This subsection applies only to minerals not subject to disposition under the Mineral Leasing Act (30 U.S.C. 181 and following), the Geothermal Steam Act of 1970 (30 U.S.C. 100 and following), or the Act of July 31, 1947, commonly known as the Materials Act of 1947 (30 U.S.C. 601 and following).".

(b) TECHNICAL CONFORMING AMENDMENT.—Section 9 of the Act of December 29, 1916 entitled "An Act to provide for stock-raising homesteads, and for other purposes" (43 U.S.C. 299) is amended by inserting "(a) General Provisions.—" before the words "That all entries made".

(c) REGULATIONS.—Within one hundred and eighty days after the enactment of this Act, the Secretary of the Interior shall promulgate such regulations as may be necessary to implement the authorities vested in him under the amendments made by this section.

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II

101ST CONGRESS
1ST SESSION

H. R. 737

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 13 (legislative day, SEPTEMBER 6), 1989

Received; read twice and referred to the Committee on Energy and Natural Resources

AN ACT

To amend the Stock Raising Homestead Act to resolve certain problems regarding subsurface estates, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MINERAL ENTRY UNDER STOCK RAISING HOMESTEAD ACT.

(a) MINERAL ENTRY UNDER THE STOCK RAISING HOMESTEAD ACT.—Section 9 of the Act of December 29, 1916 entitled "An Act to provide for stock-raising homesteads, and for other purposes" (39 Stat. 862; 43 U.S.C. 299) is amended by adding the following at the end thereof:

"(b) PROSPECTING; NOTICE OF INTENTION TO LOCATE; EXPLORATION, DEVELOPMENT, AND PRODUCTION.—

"(1) PROSPECTING; LOCATION OF CLAIMS.—Notwithstanding subsection (a), no person other than the surface owner may enter lands subject to this Act to prospect for minerals or to locate a claim under the mining laws of the United States on such lands without—

"(A) filing a notice of intention to locate a claim pursuant to paragraph (2); and

"(B) providing notice to the surface owner pursuant to paragraph (3).

Any person who has complied with paragraphs (2) and (3) with respect to any such lands may, during the authorized prospecting period, enter such lands to prospect for minerals, with minimal surface disruption, and to locate a mining claim on such lands. During such period no such person may construct any road, use any explosives, or use any mechanical earth moving equipment on such lands. With respect to any lands for which a notice is filed under paragraph (2), the term 'authorized prospecting period' means the period beginning ten days after notice is provided under paragraph (3) with respect to such lands and ending with the ex-

piration of the sixty-day period referred to in paragraph (2).

"(2) NOTICE OF INTENTION TO LOCATE A CLAIM.—Any person seeking to prospect for minerals or to locate a mining claim on lands subject to this Act may file with the Secretary of the Interior a notice of intention to locate a claim on the lands concerned. The notice shall be in such form as the Secretary of the Interior shall prescribe. The notice shall contain the name and mailing address of the person filing the notice and a legal description of the lands to which the notice applies. The legal description shall be based on the public land survey or on such other description as is sufficient to permit the Secretary to record the notice on his land status records. Whenever any person has filed a notice under this paragraph with respect to any lands, during the sixty-day period following the date of such filing, no other person (including the surface owner) may—

"(A) file such a notice with respect to any portion of such lands;

"(B) locate a mining claim on any portion of such lands; or

"(C) acquire any interest in any portion of such lands pursuant to section 209 of the Federal Land Policy and Management Act of 1976.

The Secretary may establish such fees as may be necessary to cover the administrative costs of processing notices filed under this paragraph.

"(3) NOTICE TO SURFACE OWNER.—Any person who has filed a notice of intention to locate a claim under paragraph (2) for any lands subject to this Act shall provide written notice by registered or certified mail to the surface owner (as evidenced by local tax records) of the lands covered by the notice under paragraph (2). The notice shall be provided at least ten days before entering such lands and shall contain each of the following:

"(A) A brief description of the proposed prospecting activities.

"(B) A map and legal description of the lands to be subject to prospecting.

"(C) The name, address, and phone number of the person managing such activities.

"(D) A statement of the dates on which such activities will take place.

"(4) ACREAGE LIMITATIONS.—The total acreage covered at any time by notices of intention to locate a

claim under paragraph (2) filed by any person and by affiliates of such person may not exceed six thousand four hundred acres of lands subject to this Act in any one State and one thousand two hundred and eighty acres of such lands for a single surface owner. For purposes of this paragraph, the term 'affiliate' means, with respect to any person, any other person which controls, is controlled by, or is under common control with, such person.

"(5) MINERALS COVERED.—This subsection applies only to minerals not subject to disposition under the Mineral Leasing Act (30 U.S.C. 181 and following), the Geothermal Steam Act of 1970 (30 U.S.C. 100 and following), or the Act of July 31, 1947, commonly known as the Materials Act of 1947 (30 U.S.C. 601 and following).

"(c) MINERAL EXPLORATION, DEVELOPMENT AND PRODUCTION.—

"(1) IN GENERAL.—Notwithstanding subsection (a) of this section, except for prospecting in accordance with subsection (b), no person may conduct any mineral exploration or development activities on lands subject to this Act without the consent of the surface owner thereof unless the Secretary has authorized the conduct of such activities under paragraph (2).

"(2) AUTHORIZED MINING OPERATIONS.—The Secretary may authorize a person to conduct mineral exploration and development activities on lands subject to this Act without the consent of the surface owner thereof only under the following conditions—

"(A) BOND.—Before the Secretary may authorize any person to conduct mineral exploration or development activities, the Secretary shall require such person to post a surety bond to be held by the United States, or to provide such other type of financial guarantee satisfactory to the Secretary to insure (i) reclamation of the surface, (ii) payment to the surface owner as compensation for damages to crops and tangible improvements of the surface owner, and (iii) compensation for loss of income by the surface owner due to loss or impairment of grazing, or other uses of the land by the surface owner, to the extent that reclamation required by the plan of operations would not permit such uses to continue at the level existing prior to the mineral exploration and development activities.

"(B) PLAN OF OPERATIONS.—Before the Secretary may authorize any person to conduct mineral exploration or development activities, the

Secretary shall require such person to submit a plan of operations satisfactory to the Secretary and which complies with this subparagraph. The plan shall contain such terms and conditions as the Secretary determines necessary. The conditions shall include, at a minimum, procedures for (i) reclamation of the surface, (ii) minimization of damages to crops and tangible improvements of the surface owner, and (iii) minimization of disruption to grazing or other uses of the land by the surface owner. The plan shall provide for payment of a fee for the use of the surface lands. The fee shall be paid to the surface owner by the person submitting the plan of operations. The fee shall be paid in advance of any mineral exploration or development activities or at such other time or times as may be agreed to by the surface owner and the person conducting such activities. The Secretary shall establish the surface use fee, taking into account the acreage involved and the degree of potential disruption to existing surface uses (including loss of income to the surface owner due to the loss or impairment of existing surface uses). The Secretary shall provide the plan to the surface owner at least sixty days

before the Secretary determines that the plan complies with this subparagraph. The surface owner may submit comments and recommend plan modifications to the Secretary during such sixty-day period.

The Secretary shall suspend or revoke his authorization under this paragraph whenever he determines, on his own motion or on a motion made by the surface owner, that the person conducting mineral exploration or development activities is in substantial noncompliance with the terms and conditions of the plan and failed to remedy the violation after notice from the Secretary within the time required by the Secretary.

"(3) DAMAGES FOR FAILURE TO COMPLY.—Whenever the surface owner of any land subject to this Act has suffered any damages or loss referred to in paragraph (2)(A), if such damages or loss results—

"(A) from any mineral exploration or development activities undertaken without the consent of the surface owner under paragraph (1) or an authorization by the Secretary under paragraph (2), or

"(B) from the failure of a mine operator to remedy any substantial noncompliance with the terms and conditions of a plan under paragraph

(2)(B) pursuant to a notice from the Secretary under the last sentence of paragraph (2),

the surface owner may bring an action in the appropriate United States district court for, and the court may award, treble damages. Such damages shall be reduced by the amount of any compensation which the surface owner has received (or is eligible to receive) pursuant to the surety bond or other financial guarantee required under paragraph (2)(A). The surface owner of such lands may also bring an action in the appropriate United States district court for treble damages against any person undertaking any minerals prospecting activity on such lands in violation of any requirement of paragraph (1).

"(4) PAYMENT OF DAMAGES.—The surface owner of any land subject to this subsection may petition the Secretary for payment of all or any portion of a surety bond or other financial guarantee required under paragraph (2)(A) as compensation for damages and losses referred to in paragraph (2)(A). Pursuant to such a petition, the Secretary may use such bond or other guarantee to provide compensation to the surface owner for such damages.

"(5) BOND RELEASE.—The Secretary shall release the surety bond or other financial guarantee re-

quired under paragraph (2)(A) upon the successful completion of all reclamation activities required pursuant to the plan approved under paragraph (2)(B) or at such earlier date as may be agreed to by the surface owner.

"(6) MINERALS COVERED.—This subsection applies only to minerals not subject to disposition under the Mineral Leasing Act (30 U.S.C. 181 and following), the Geothermal Steam Act of 1970 (30 U.S.C. 100 and following), or the Act of July 31, 1947, commonly known as the Materials Act of 1947 (30 U.S.C. 601 and following).

"(d)(1) CONVEYANCE TO SURFACE OWNER.—The Secretary of the Interior may convey interests owned by the United States (including mineral interests) in lands subject to this section to the surface owner pursuant to the provisions of section 209 of the Federal Land Policy and Management Act of 1976 without regard to the requirement contained in such provisions that findings be made under subsection (b) of such section.

"(2) The Secretary shall take such actions as may be necessary to simplify the procedures which must be complied with by surface owners of lands subject to this Act who apply to the Secretary to obtain title to interests in such lands owned by the United States.".

(b) TECHNICAL CONFORMING AMENDMENT.—Section 9 of the Act of December 29, 1916 entitled "An Act to provide for stock-raising homesteads, and for other purposes" (43 U.S.C. 299) is amended by inserting "(a) GENERAL PROVISIONS.—" before the words "That all entries made".

(c) REGULATIONS.—Within one hundred and eighty days after the enactment of this Act, the Secretary of the Interior shall promulgate such regulations as may be necessary to implement the authorities vested in him under the amendments made by this section.

Passed the House of Representatives September 12, 1989.

Attest: DONNALD K. ANDERSON,

Clerk.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII

Senator INOUYE. Thank you very much, Mr. Chairman. I thank you for this opportunity to speak on S. 1805, a private relief bill that deals with an oil and gas lease in central California that was originally issued under section 14 of the Mineral Leasing Act of 1920. This particular lease, LA 0334164, is owned by Mr. Paul Lieb and Mr. John Prescott.

S. 1805 would allow the Bureau of Land Management to reinstate this lease which was terminated in 1986 due to a misunderstanding over the payment of the lease rent. In enacting the 1982 amendments to the Mineral Leasing Act of 1920, leases issued under section 14 were not included in the reinstatement clause because there were so few of these leases. Accordingly, although leases issued under section 17 may be reinstated, section 14 leases were not included in this statute.

The relief proposed by this bill is consistent with the intent of reinstatement provisions of the statute. While I understand that the U.S. Department of the Interior is requesting a generic bill, it was my understanding matters of such nature were handled on a case-to-case basis. It is for this reason that I am requesting your subcommittee to handle this matter, as it has done historically, on a case-to-case basis.

On the subject of time limitation or diligence requirement, I believe we are all in agreement that such a requirement is appropriate. Accordingly, if the subcommittee chooses to amend this bill to include a time limit, I would support such an amendment.

And once again, I thank you very much, Mr. Chairman, for this opportunity to present this testimony, and I urge you to look upon this matter with some favor, sir.

Senator BINGAMAN. Thank you very much, Senator Inouye, and we will certainly try to act quickly on your proposal here. I gather we have two other witnesses who are going to give testimony on this. Mr. John Prescott is here from Santa Ana, California, and of course the Assistant Director for Energy and Minerals with the BLM, Mr. Hillary Oden, is going to testify on this as well. But we appreciate your presence, and thank you very much.

Why don't we have Mr. Prescott and Mr. Oden please come forward at this time? And we will first complete the testimony on this particular bill that Senator Inouye was discussing. And after that, I will call on Mr. Oden to go ahead and give testimony on the other legislation that we are considering today.

Mr. Prescott, why don't you go first here and make any statement you would like?

STATEMENT OF JOHN A. PRESCOTT, SANTA ANA, CA

Mr. PRESCOTT. Thank you.

Good afternoon. My name is John Prescott. My home is in Tustin, California. I appreciate the opportunity to appear here today to discuss the merits of S.1805, a private relief bill that would permit the Secretary of the Interior to reinstate an oil and gas lease located under 40 acres of private property in Kern County, California.

The lessee of record for this lease is my brother-in-law, Paul D. Lieb of Pahoa, Hawaii. Paul also owns the fee title to the 40 acres subject only to the government's interest in the subsurface mineral rights.

On behalf of Paul Lieb and myself, I would like to express our sincere gratitude to you, Senator Bingaman, for chairing this hearing, to Senator Inouye for his sponsorship of S. 1805, and to Senators Cranston and Wilson for their active co-sponsorship of this measure.

My brother-in-law's lease was originally issued under section 14 of the Mineral Land Leasing Act of 1920, and it was acquired by Paul's family in the 1950s. For the past seven years, I have been advising Paul on lease remittances to the Bureau of Land Management and other matters concerning his Kern County property.

Three and a half years ago, Paul mailed me his lease remittance check dated July 3 of 1986, payable to the Department of the Interior for my concurrence and approval prior to submission. A copy of that check is attached as Exhibit A to my written statement. Paul's check was received at my home on or about July 10, 1986, and was placed with other pending matters for my attention. Through my personal oversight, due in part to a plethora of personal details involved with our families' businesses, Paul's payment was not received by the BLM prior to the anniversary date of the lease, a mistake for which I take full financial responsibility.

When Paul's payment was not received, the Department of the Interior issued an oil and gas lease termination notice which I received on November 17, 1986. This was the first time I realized that the payment had not been mailed. I immediately mailed Paul's check to the bureau's fiscal office in Denver, Colorado, and then petitioned for reinstatement under the provisions of 30 U.S.C. 188(d) and (e).

Although the Bureau was initially inclined to grant our petition for reinstatement, it found a technical conflict between its own regulations and the statute and subsequently denied the petition because only section 17 leases were included in the statutory language granting the Secretary of the Interior discretion to reinstate oil and gas leases under circumstances as I have described. Had this lease been a section 17 lease, there is no doubt that it would have been reinstated.

The first reason why a private relief bill is warranted here is that recovery of any oil under this property is currently not cost feasible for anyone, and reinstatement would simply return the lease to the owner of the surface property, a good result as a matter of common sense.

The second reason is that Congress has already decided, in circumstances almost identical to this, not to penalize individual lessees for an inadvertent failure to post a check on time. My failure to post Paul's check is precisely the circumstances envisioned by Congress when it granted the Secretary of the Interior discretion or authority to reinstate automatically terminated leases.

I have explained the basis for the first reason in my written statement, and I will not dwell further on the issue of production infeasibility at this time unless there are specific questions.

Let me explain. Prior to Paul's family acquiring the lease in the 1950s, a producing oil well on the property had been rendered inoperable due to a technical problem sometime in the 1920s or the 1930s. The original lessee drilled two other wells on the property in the 1930s, but both were dry holes. The oil, if any, now under the property is heavy crude and is only recoverable through secondary recovery, which entails pumping steam down into the structure. This type of recovery has not been cost feasible since Paul's family acquired the lease. Depending on the market, of course, the cost feasibility of future oil development may change.

I am aware of the Department of the Interior's recommendation that reinstatement of this oil and gas lease include a 20 year due diligence requirement for future oil production. Although a due diligence requirement makes sense in the abstract, I am personally opposed to imposing such a restriction on this lease because it might result in future penalization of my brother-in-law, the named lessee, for failure to produce oil when such production would be highly inefficient or impossible for anyone. The result would be that the only entities that might attempt to develop the mineral rights under Paul's property would be large oil companies that could afford to absorb losses on inefficient projects.

All things considered, it appears to me that the narrow private relief route for this problem is the most efficient and simplest. My attorney has been in communication with committee staff members on the House side, and although they prefer eventually to solve this problem across the board, they are also amenable to this private relief bill in the short term.

In light of these circumstances, I respectfully request that this subcommittee report S. 1805 favorably to the full committee.

This concludes my statement. I will be pleased to answer any questions that you may have. Thank you for the privilege of testifying here today.

[The prepared statement of Mr. Prescott follows:]

Statement of Mr. John A. Prescott

INTRODUCTION

First of all, on behalf of my brother-in-law, Paul Lieb of Pahoa, Hawaii, and myself, I would like to express our sincere gratitude to Senator Bingaman for chairing this hearing, to Senator Inouye for his sponsorship of S.1805, and to Senators Cranston and Wilson for their active cosponsorship of S.1805.

Paul Lieb is the named Lessee of Department of Interior Oil and Gas Lease LA 033614 ("the Lease"). The Lease has been in the Lieb family since 1956, having been originally issued under Section 14 of the Mineral Land Leasing Act of 1920 (41 Stat. 437, 442, codified at 30 U.S.C. § 223). Since July of 1983, when Paul's brother, the late Joseph A. Lieb, died, the Lease passed to Paul by intestate succession. I have been advising him on lease remittances to the Bureau of Land Management and other matters concerning his Kern County property.

Paul mailed me his check dated July 3, 1986, payable to the Department of Interior, for my concurrence and approval (Exhibit A). The check was received at my home on or about July 10, 1986, and was placed with other pending matters for my attention. Through my personal oversight, due in part to a plethora of personal details involved with our families' business, Paul's payment was not posted prior to the anniversary date of the Lease -- a mistake for which I have taken full financial responsibility and the occasion of my testimony before this Subcommittee today.

Upon receiving the Department's "oil and gas lease termination notice" on November 17, 1986, I discovered that Paul's payment was still with some other items of my unfinished business and I immediately mailed it to the Bureau's fiscal office in Denver, Colorado, petitioning for reinstatement under the provisions of 30 U.S.C. § 188(d) & (e).

FACTUAL BACKGROUND

The Lieb family acquired this Lease in 1956. The surface property of the lease, which also belongs to Paul Lieb subject only to the government's interest in the

subterranean mineral rights, is located in Kern County, California. Prior to acquisition of the Lease, a producing oil well on the property had been rendered inoperable due to a technical problem sometime in the 1920's or 1930's. The original lessee drilled two other wells on the property in the 1930's but both were "dry holes".

The Lieb Lease was last renewed for a 10-year period effective September 1, 1983. One of the terms in the renewal was that:

> Failure to pay annual rent, if due, on or before the anniversary date of this lease . . . shall automatically terminate this lease by operation of law. Rentals may be waived, reduced, or suspended by the Secretary upon a sufficient showing by Lessee.

The oil, if any, now under the property is "heavy crude," and is only recoverable through "secondary recovery," which entails pumping steam down into the structure. Until now, such recovery has not been cost feasible. Depending upon the market, the cost feasibility calculus may change.

BASIS FOR REINSTATEMENT DENIAL

The California State Office of the Bureau of Land Management denied our petition for reinstatement on the ground the reinstatement provisions of the statute only applies to leases issued under Section 17 of the 1920 Act. (Codified at 30 U.S.C. § 226). The California State Office's decision (hereinafter referred to as "BLM decision") states that:

> This office looked upon the petition favorable believing the Lessee had submitted a proper Class II petition. In processing the case, however, an inconsistency between the regulations and the law was found. The regulations do not specify they apply to any particular category of leases. It was assumed that the regulation applied to

> all categories of leases. The law, however, applies to specific categories of lease. Lease LA 033164 is a lease that was issued under Section 14 of the original Act of February 25, 1920 (41 Stat. 437). The act as now amended only allows Class II reinstatement if the leases were issued under Section 17(b) and 17(c).
>
> This office attempted to determine the relevancy of the discrepancy between the regulations of the law, but failed. Therefore, a solicitors opinion was requested from the office of the Regional Solicitor, Pacific Southwest Region, Sacramento, California, to resolve the discrepancy. The solicitor determined that a lease issued under Section 14 of the original Act of February 25, 1920, cannot be reinstated under the Class II procedures.

BLM decision at 1-2.

The solicitor's rationale was that "[s]tandard rules of construction preclude going behind the plain language of a statute to derive congressional intent unless the language of the statute is ambiguous or vague." BLM decision at 2.

The BLM decision to deny our petition for reinstatement suggests that the legislative intent as to the applicability of the Section 17 reinstatement provision to Section 14 leases is unclear: "[I]t is doubtful that Congress ever considered the applicability of Sec. 401 to this tiny sub-set of federal oil and gas leases." BLM decision at 2 (quoting solicitor). Through counsel, I have confirmed this doubt as to congressional intent with various staffmembers of the House and Senate committees responsible for the original legislation, and with staff at BLM.

On May 12, 1988, we appealed the California State BLM Office's denial of our petition for reinstatement to the BLM's Board of Land Appeals. The Department of Interior has taken the position on appeal that it is constrained by technicalities in the current statute to deny reinstatement. No decision on the appeal has been issued.

ARGUMENTS FOR LEGISLATIVE RELIEF

A. The Circumstances of This Lease Termination Warrant Legislative Relief, Either Private or Generic.

My inadvertent failure to forward the lessee's timely drawn lease payment are precisely the type of circumstances Congress envisioned when it granted the Secretary of Interior reinstatement discretion. BLM has indicated that were this a Section 17 Lease, it would already have been reinstated. Furthermore, the Secretary of Interior has endorsed legislation to untie his hands in circumstances such as this (Exhibit B).

BLM's initial inclination to reinstate the Lieb Lease was based on the fact that the Regulations governing reinstatement did not distinguish between Section 14 and Section 17 leases. Section 14 and Section 17 leases are treated identically in at least two respects: (1) Section 14 leases enjoy "the right of renewal as prescribed in Section 17" (41 Stat. 442); and (2) both Section 14 and Section 17 leases are subject to automatic termination for failure to pay annual rent due on or before their lease anniversary dates (30 U.S.C. § 188). Because of these parallels, neither the Reinstatement Regulations nor the Renewal Lease format utilized by BLM have distinguished between the two types of leases with regard to reinstatement.

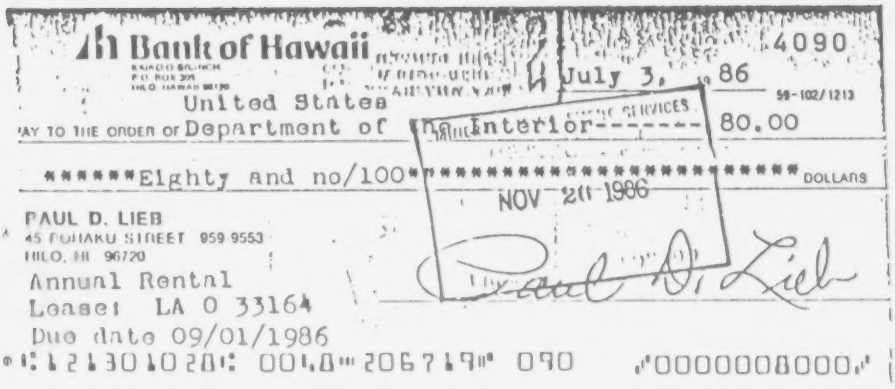
Considering the circumstances, we know of no legitimate policy justification for permanently revoking Paul Lieb's oil and gas lease for mineral rights underneath his property. Reinstatement of this Lease does not risk opening any private relief floodgates as there are so few of these leases left (See Exhibit C). Furthermore, reinstatement of this Lease will cost the Government very little if any (See Exhibit C); nonreinstatement, on the other hand, will result in the refund of annual rent I have been conditionally paying over the last three years. Finally, I can assure you that, should this Lease be reinstated, the mineral rights will be responsibly managed and developed if and when such development becomes feasible.

B. Our Decision to Pursue Private Relief As Opposed to a Generic Fix Was a Practical Decision.

When we realized that the Department of Interior felt constrained by technicalities in the current statute to deny reinstatement, we originally attempted to muster support for a generic legislative fix, particularly in light of the consensus that the issue of Secretarial reinstatement for Section 14 leases appears to have been overlooked when the Section 17 Reinstatement legislation was enacted. Through my local congressman, William E. Dannemeyer, we obtained the Secretary of Interior's official endorsement of such a generic fix (Exhibit B). On advise of this Subcommittee's staff, however, we decided to pursue the private relief route, as opposed to a generic fix, the latter being perceived as more difficult to enact for various reasons.

The practical effect of S.1805 is simply to treat our Lease as if it had been issued under Section 17 for purposes of reinstatement only, i.e., to permit the Secretary of Interior to reinstate the Lease. As the generic fix endorsed by the Secretary of Interior and S.1805 would effect the same result with respect to Paul Lieb's Lease, i.e., reinstatement, we prefer the route that is most likely to reach that result.

Unless this Subcommittee feels that a generic legislative solution to our reinstatement problem is (1) desireable and (2) practically enactable in the near future, we respectfully request that this Subcommittee report S.1805 favorably to the full committee.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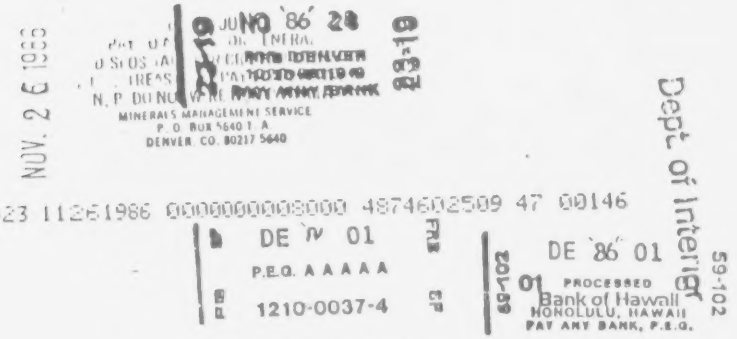
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- Exhibit A -

THE SECRETARY OF THE INTERIOR
WASHINGTON

August 9, 1989

Honorable William E. Dannemeyer
House of Representatives
Washington, D.C. 20515

Dear Bill:

Thank you for your letter, urging my support for corrective legislation concerning reinstatement provisions for Section 14 oil and gas renewal leases. I regret the delay in responding to your letter.

I fully concur with the position previously expressed by then Acting Secretary Earl Gjelde in his January 24, 1989, letter to you. The Department continues to favor a correction to the January 1983 Mineral Leasing amendment that would allow for the reinstatement of Section 14 renewal leases in cases where the lessee fails to pay the annual rental timely.

We look forward to working with the 101st Congress in resolving this matter.

Sincerely,

Manuel

- EXHIBIT B -

JAN 30 1989

THE SECRETARY OF THE INTERIOR
WASHINGTON

January 24, 1989

Honorable William E. Dannemeyer
House of Representatives
Washington, D.C. 20515

Dear Mr. Dannemeyer:

Thank you for your letter of December 22, 1988, concerning the lack of reinstatement provisions for Section 14 oil and gas renewal leases under the Mineral Leasing Act, 30 U.S.C. 188(d).

I agree that the lack of an appropriate reinstatement provision for the Section 14 oil and gas renewal leases appears to be a statutory omission in the January 1983 amendment to the Mineral Leasing Act which expanded the provisions for oil and gas lease reinstatement. The Department of the Interior would look forward to working with the 101st Congress regarding corrective language to allow reinstatement of Section 14 renewal leases in cases where the lessee fails to pay the annual rental timely.

At my direction, the Bureau of Land Management has analyzed the costs involved in reinstatement of Section 14 leases and that report is enclosed.

Sincerely,

Acting Secretary

Enclosure

Celebrating the United States Constitution

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

TAKE PRIDE IN AMERICA

IN REPLY REFER TO:

Memorandum

To: Secretary

Through: Deputy Assistant Secretary - Land and Minerals Management James E Cason JAN 19 1989

From: Director, Bureau of Land Management

Subject: Representative William E. Dannemeyer Request for Information on Costs Involved in Reinstatement of Mineral Leasing Act Section 14 Oil and Gas Renewal Leases

The Bureau of Land Management has reviewed the existing oil and gas leases that are Section 14 renewal leases. Currently 570 Section 14 leases are in effect, of which 105 are in rental status. As Representative Dannemeyer is aware, an additional two lease cases are under appeal before the Interior Board of Land Appeals.

The cost to the Bureau of processing each Class II lease reinstatement under the provisions of the oil and gas leasing regulations at 43 CFT 3108.2-3 averages approximately $500. Therefore, if all the remaining 105 renewal leases currently in rental status were to terminate due to failure to timely pay the required annual rental (a situation not thought likely to occur), the total Bureau of Land Management costs would be estimated as approximately $53,500, including the two cases currently under appeal.

Robert J Burford

Supplemental Statement of Mr. John A. Prescott

Regarding S.1805

Senate Committee on Energy and Natural Resources
Mineral Rescurces Development and Production Subcommittee

Dirksen Senate Office Building, Room 366

March 9, 1990

I am aware of the Department of Interior's recommendation that reinstatement of this oil and gas lease include a 20-year due diligence requirement for future oil production. This appears to be a reasonable recommendation, and I would therefore not oppose amending S.1805 in this regard as the Department of Interior recommends.

Senator BINGAMAN. Well, thank you very much for your testimony. Let me call on Mr. Oden at this point to give the position that the Bureau of Land Management has on this issue.

STATEMENT OF HILLARY A. ODEN, ASSISTANT DIRECTOR, ENERGY AND MINERAL RESOURCES, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, ON S. 1805 AND H.R. 3727

Mr. ODEN. Thank you, sir. I appreciate the opportunity to appear here today to discuss the views of the Department of the Interior on S. 1805.

We do oppose enactment of S. 1805 unless it is amended as we will suggest.

Lease LA 033164 is not the only section 14 lease terminated for failure to pay annual rental. Leases CAS 019746C and CAS 021009B are on appeal to the Interior Board of Land Appeals, along with the subject lease. Further, there are 16 other section 14 leases in California, which are subject to the payment of rental or to automatic termination by operation of law for failure to pay annual rental. And 62 other section 14 leases in California are currently in production and are therefore paying a royalty, but could revert to a rental situation subject to termination for failure to pay. There are about 570 section 14 leases nationwide, of which 105 are subject to payment of rental or automatic termination.

Because of the number of section 14 leases that could be subject to termination, we recommend the provision allowing for reinstatement of section 17 leases be extended to apply to those leases as well. We do not believe it is equitable or appropriate to reinstate only one specific lease without consideration for all other section 14 leases that are on appeal or which could be subject to this penalty. We therefore would not oppose S. 1805 if it is amended to include all section 14 leases.

On the subject of section 14 leases generally, we believe such leases should have some time limit as to how long they can be held without production of oil or gas. Absent production within 20 years, there seems to be no reason why they should not be terminated. We therefore suggest the subject bill provide for such a limit, say, 20 years after the next renewal date. In this regard, it should be noted that the three leases now before IBLA are all over 50 years old.

We do recommend one technical amendment. The serial numbers of these leases have been changed to accommodate BLM's new computer system for record keeping. Therefore, LA 033164 should be amended to read CALA 033164.

This concludes my statement, and I will be pleased to answer any questions you may have.

[The prepared statement of Mr. Oden on S. 1805 and H.R. 3727 follows:]

MAR 9 1990

STATEMENT OF HILLARY A. ODEN, ASSISTANT DIRECTOR, ENERGY AND MINERAL RESOURCES, BUREAU OF LAND MANAGEMENT, UNITED STATES DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON MINERAL RESOURCES DEVELOPMENT AND PRODUCTION, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE, ON S. 1805, A BILL "TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO REINSTATE OIL AND GAS LEASE LA 033164."

I appreciate the opportunity to appear here today to discuss the views of the Department of the Interior on S. 1805.

The first section of S. 1805 directs the Secretary of the Interior to treat United States oil and gas lease LA 033164 as if it had been issued under section 17(c) of the Mineral Leasing Act, for purposes of reinstatement only.

Section 2 of S. 1805 requires the Secretary, within 30 days after enactment, to give written notice to the last lessee of record for lease LA 033164 that the lessee may petition for reinstatement in accordance with the procedures and conditions in subsections 31(d) and (e) of the Mineral Leasing Act. The last lessee of record would be required to file such petition within 60 days from the date of the Secretary's notice. If the Secretary determines that the lease qualifies for reinstatement under subsection 31(d) in all respects except for compliance with the deadline imposed by that provision, the Secretary would be required to reinstate the lease pursuant to the conditions of subsection 31(e) of the Mineral Leasing Act.

We oppose enactment of S. 1805, unless it is amended as we will suggest.

This legislation is designed to provide private relief to an oil and gas lessee unable to obtain reinstatement of his oil and gas lease. The lessee

31-151 O - 90 - 4

failed to pay his annual rental on or before the anniversary date of the lease as required by law. Under section 31(b) of the Mineral Leasing Act (MLA), the lease terminated.

Section 31(d) of the MLA allows reinstatement of leases that terminated due to inadvertence. However, section 31(d) explicitly refers to leases issued pursuant to section 17(b) of the MLA. The terminated lease, that is the subject of S. 1805, was issued in 1923 under the noncompetitive provisions in section 14 of the original MLA. Our Solicitor has determined that specific reference to section 17 foreclosed reinstatement of such leases issued under section 14.

Lease LA 033164 is not the only section 14 lease terminated for failure to pay annual rental. Leases CAS 019746C and CAS 021009B are on appeal to the Interior Board of Land Appeals (IBLA) along with the subject lease. Further, there are 16 other section 14 leases which are subject to the payment of rental or to automatic termination by operation of law for failure to pay annual rental. Sixty two other section 14 leases are currently in production and are therefore paying a royalty but could revert to a rental situation subject to termination for failure to pay.

Because of the number of section 14 leases which could be subject to termination, we recommend the provision allowing for reinstatement of section 17 leases be extended to apply to those leases as well. We do not believe it is equitable or appropriate to reinstate only one specific lease without

consideration for all other section 14 leases that are on appeal, or which could be subject to this penalty. We therefore oppose S. 1805 unless it is amended to include all section 14 leases.

On the subject of section 14 leases generally, we believe such leases should have some time limit as to how long they can be held without production of oil or gas. Absent production within 20 years, there seems to be no reason why they should not be terminated. We therefore suggest the subject bill provide for such a limit. In this regard, it should be noted that the 3 leases now before IBLA are all over 50 years old.

We recommend one technical amendment. The serial numbers of these leases have been changed to accommodate BLM's new computer system. Therefore, LA 033164 should be amended to read CALA 033164.

This concludes my statement. I will be pleased to answer any questions you may have.

Senator BINGAMAN. Well, as I understand it, this particular lease was entered into back in the 1920s. Is that correct?

Mr. PRESCOTT. Yes, Senator.

Senator BINGAMAN. And the BLM position is that they could support a provision, such as Senator Inouye has offered here, if we made it broader and if we also put in a 20 year diligence requirement.

Mr. ODEN. Yes, sir.

Senator BINGAMAN. And your argument against the 20 year diligence requirement is what, Mr. Prescott?

Mr. PRESCOTT. We do not know whether it will be in one year, 20 years or 30 years. That is now in a secondary recovery. It is in the Sunset Midway Field. Virtually all the oil that is coming out of there today is because steam is being put down into the structure. It is very expensive. It is very marginal. When we had $30 oil, there was a boom out there. When you had $2 or $3 oil some time ago, the area was virtually abandoned. It is a cost benefit differential. It is hard to say just when that would happen.

I assure you and I assure the Department that when it is cost effective, my brother-in-law and his family will develop the property.

Senator BINGAMAN. All right. Well, that is the only question I really had on this particular proposal. I would now propose that we shift over and discuss this other legislation for a moment and ask Mr. Oden to testify on that.

Mr. Prescott, you can be dismissed. You do not need to remain if you have other things to do.

Mr. PRESCOTT. I have come all the way from California to appear here. I would like to watch you in action.

Senator BINGAMAN. Well, we are glad to have you.

Mr. PRESCOTT. And I will take a souvenir home with me.

Senator BINGAMAN. We wish we could have had a more exciting hearing for you considering the distance you came.

Mr. Oden, could you go ahead and state the BLM position on the other pending legislation?

STATEMENT OF HILLARY A. ODEN, ASSISTANT DIRECTOR, ENERGY AND MINERAL RESOURCES, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, ON S. 1908 AND H.R. 737

Mr. ODEN. Thank you, Senator.

I appreciate the opportunity to appear here today to give you our views on S. 1908 and H.R. 737, similar proposals aimed at bringing about closer coordination between locatable mineral development activities and surface uses on lands patented under the Stock Raising Homestead Act.

We are pleased that Congress is looking into the matter of split estates and mining in order to facilitate the coordination and cooperation necessary for successful management of these situations.

In discussing some specific elements of the bills, I will briefly summarize their provisions. There are several differences between the bills which I will address in my comments on specific sections. We do have several recommendations for amendments.

As far as the period for prospecting is concerned, new subsection 9(b)(1) would provide in part that only prospecting activities causing minimal surface disturbance would be permitted after the filing of a notice of intention to locate a claim and surface owner notification. The bills specify types of activities that are not permitted. For the most part, only reconnaissance geologic exploration and claim staking could take place during the notice period.

The bills do not provide for any activities to take place after this reconnaissance exploration, should there be a significant time lapse between the end of such exploration and obtaining the authorizations required under subsection 9(c) for further mining activity.

The possibility exists that a claimant would not be able to maintain his mining claim during this potential interim period. This is because he would be unable to perform work necessary to comply with the annual assessment requirements of the Mining Law of 1872 and of the Federal Land Policy and Management Act.

To address and remedy this issue, the bill should be amended to require the payment of a $100 annual holding fee in lieu of the assessment requirement in the Mining Law. We note the President's 1991 budget proposes such a change. If this amendment is not accepted, perhaps the bill could be amended to permit more intensive prospecting on a very limited number of acres during the prospecting period, or another approach would be an amendment to authorize a filing of justified deferment of annual assessment work with the Secretary.

New section 9(b)(1) would define the authorized prospecting period as beginning 10 days after a notice of prospecting is provided the surface owner, and expiring 60 days after the filing of the notice of intention to locate a claim. The result is a 50 day prospecting period during which no one else could establish rights.

This time period could be too short to complete the task of exploring for mineral deposits, identifying a discovery, surveying mining claims, staking monuments, and filing location notices with the Secretary. We suggest the authorized prospecting period be expanded to 120 days or that a provision be added to authorize an extension of time for additional work, without a break in the protective effect of the notice.

Insofar as the acreage limitations are concerned in new subsection 9(b)(4), due to the nature of some mineral deposits and the potential for disruptive claims by several claimants, the acreage limitation could significantly reduce a mining company's incentive to invest money in a costly exploration program. For this reason, we recommend deletion of the acreage limitations.

On bonding, new subsection 9(c)(2)(A) requires a bond or other type of financial guarantee in the absence of consent by the surface owner before the Secretary authorizes mineral exploration or development activities. The bond is to ensure reclamation, payment to the surface owner for damages to crops or tangible improvements of the surface owner, and compensation for loss of income by the surface owner due to loss or impairment of grazing or other uses of the land.

Paragraph (c)(2)(B) requires a plan that would provide for an advance payment of a surface use fee to the owner. The use fee would be established by the Secretary and would be based on the amount

of acreage involved and the degree of potential disruption of existing surface uses, including loss of income to the surface owner due to impairment or loss of existing surface uses for the duration of the mineral activities.

The scope of the bonding requirement is not clear as to the time period covered. The use fee would take into account acreages involved and the degree of disruption, including loss of income to the surface owner, due to impairment of existing surface uses, and would be paid in advance. For these reasons, we believe the bond need not insure against the loss of use during the period of mineral development. We suggest only loss of use after operations have ceased and reclamation is complete be included under the bond.

The bond also covers the potential loss of income by the surface owner due to loss or impairment of existing grazing or other uses. This amount is open-ended and would be extremely difficult for the Secretary to determine. Further, under subsection 9(c)(3), the surface owner may bring action in the United States District Court for treble damages for loss of income. As discussed later, we do not believe treble damages are warranted, but do favor the provision for a court remedy. Because of these other remedies, we suggest dropping or limiting the loss of income calculation as part of the bond amount.

We are also concerned that the provisions for compensation for loss of income mentioned in the paragraphs on bonding, surface use fees, and compensation for damages may be excessive. In several areas of the country, Stock Raising Homestead Act lands are no longer being used for grazing livestock in spite of the intention in the original legislation that these lands be used for grazing and raising forage crops. In some areas, like the foothills of the Sierra Nevada in California, the lands have been sold and subdivided into housing tracts. There is a potential for other non-agricultural uses of the surface, such as shopping centers or other commercial developments. We do not believe the prospective mineral developer should be required to compensate a surface owner for potential land speculation not contemplated by the Stock Raising Homestead Act. We suggest that "loss of income from existing surface uses" be changed to "loss of income from agricultural uses". That would reflect the intent of Congress in enacting the Stock Raising Homestead Act.

On lawsuits, new subsection 9(c)(3) authorizes the surface owner to bring an action in a United States District Court against a mine operator for loss of income from actions taken without the surface owner's consent or an authorization by the Secretary, or for failure to remedy any substantial noncompliance with the terms and conditions of a plan. Treble damages could be awarded. These damages could also be sought for damages and loss of income caused during prospecting activities. Moreover, these damages could be awarded without any finding of intent.

We wholeheartedly agree the surface owner should be compensated for damages caused by unapproved prospecting and mining. However, we believe treble damages are excessive, especially without any finding of intent. The surface owner should only be entitled to recover damages for what is actually destroyed or lost and we suggest that the bills be amended accordingly.

In addition, we notice this subsection does not make it clear that the surface owner may sue only the mineral claimant or operator. Because the Federal Government should not be held liable for damages caused as a result of mineral activity, this section should be amended to make it clear that no Federal liability exists.

As to regulations, subsection 1(c) of both bills requires the Secretary to promulgate regulations to implement the new authorities within 180 days of enactment of this act. Usually regulations of this nature require at least one year to promulgate, and we would urge amendment to incorporate a more realistic time frame.

We note several areas of differences between the two bills. We do prefer the language of S. 1908 in each of the instances. If H.R. 737 is to be enacted, we recommend some additional amendments to bring it into conformity with S. 1908.

New subsection 9(b)(2)(B) of H.R. 737 should include "prospecting for minerals" as well as locating a claim. This simply clarifies the activity that both bills contemplate.

New subsections 9(c)(2)(A), 9(c)(2)(B) and 9(c)(3)(B) of H.R. 737 should be clarified by including language to specifically cover production activities. It would clarify inclusion of production as distinct from the term "development".

In subsection 9(c)(2)(B) of H.R. 737, in the provision concerning the payment of a surface user fee, the loss of income to the surface owner due to loss or impairment of the existing surface uses should be limited to loss of use "for the duration" of the activities. Potential loss of use after completion of operations would be difficult to evaluate prior to development. Therefore, we believe the provisions requiring the bond to cover loss of use after activities have ceased are sufficient to protect the surface owner.

We would strongly urge deletion from H.R. 737 of new subsection 9(d) which relaxes the requirements in section 209 of FLPMA for conveyance of mineral interests or other interests in Stock Raising Homestead Act lands to benefit surface owners.

Under FLPMA, conveyances of the mineral interests can take place only if the Secretary finds that there are no known mineral values in the land or that the mineral reservation is interfering with appropriate non-mineral development that constitutes a more beneficial use than mineral development. These criteria were enacted after many years of experience and consideration of competing interests. We continue to believe their application to all lands covered by section 209 is in the public interest and is necessary to prevent a windfall effect. And we find no justification for a different approach for surface owners for this one category of lands.

Section 9(d) also requires the Secretary to take actions necessary to simplify the procedures which must be complied with for conveyance of the mineral rights to the surface owner. Our regulations in 43 CFR 2720 were adopted to provide for such conveyances while assuring protection of the public interest, after opportunity for public comment. As with all of our regulations, they are always subject to a periodic review and reevaluation process. We will be happy to reexamine them within this framework. However, we do not believe it is necessary to include this requirement in legislation.

Thank you for the opportunity to present our recommendations. I would be happy to answer any questions.

[The prepared statement of Mr. Oden on S. 1908 and H.R. 737 follows:]

MAR 9 1990

STATEMENT OF HILLARY A. ODEN, ASSISTANT DIRECTOR, ENERGY AND MINERAL RESOURCES, BUREAU OF LAND MANAGEMENT, UNITED STATES DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON MINERAL RESOURCES DEVELOPMENT AND PRODUCTION, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE, ON S. 1908, A BILL "TO AMEND THE STOCK RAISING HOMESTEAD ACT TO PROVIDE CERTAIN PROCEDURES FOR ENTRY ONTO STOCK RAISING HOMESTEAD ACT LANDS, AND FOR OTHER PURPOSES", AND H.R. 737, A BILL "TO AMEND THE STOCK RAISING HOMESTEAD ACT TO RESOLVE CERTAIN PROBLEMS REGARDING SUBSURFACE ESTATES, AND FOR OTHER PURPOSES."

I appreciate the opportunity to appear here today to give you our views on S. 1908 and H.R. 737, similar proposals aimed at bringing about closer coordination between locatable mineral development activities and surface use on lands patented under the Stock Raising Homestead Act.

In managing the public lands, including the reserved Federal mineral estate, the BLM strives to be a good neighbor to those who own land adjacent to the public lands as well as those who own the surface lands over the Federal mineral estate. We feel that the mining industry likewise has an obligation to be good neighbors to surface land owners and managers of the public mineral estate. In this respect, it only makes good sense that potential prospectors and mining claimants of land acquired under the Stock Raising Homestead Act develop a closer rapport and accountability with surface owners, so there will not be any surprises or misunderstanding as mineral exploration or development progresses.

We are pleased that Congress is looking into the matter of split estates and mining in order to facilitate the coordination and cooperation necessary for successful management of these situations.

We support the concepts and approach evident in both bills whereby the onus for reaching agreement remains with the interested parties and the Secretary of the Interior could step in when agreement cannot be reached. We prefer the specific language of S. 1908, but support enactment of either bill if amended as set forth in the balance of my statement.

Before discussing specific elements of the bills I will briefly summarize their provisions. Both would amend section 9 of the Stock Raising Homestead Act. The proposed amendments set forth procedures applicable to prospecting, location, and development of locatable mineral deposits underlying lands patented under that Act. These additional obligations would be imposed on any person, other than the surface owner, who is pursuing locatable mineral activity.

In general new subsection 9(b) addresses prospecting and location that cause minimal surface disturbance, while subsection 9(c) addresses exploration, development and production.

More specifically, the requirements in subsection 9(b) are mainly informational and are met through filing the prescribed "notice of intention to locate a claim" with the Secretary and then giving notice to the surface owners. These notices have a term of 50 days beginning 10 days after the filing of the notice, during which prospecting could take place. They are not required for a surface owner, who may be the prospector/locator. Under subsection (b)(2), filing the prescribed notice would protect the filer for

the 60-day period by prohibiting anyone else, including the surface owner, from filing a notice, locating a claim or acquiring any interest in the land pursuant to section 209 of the Federal Land Policy and Management Act (FLPMA). (that is acquiring the Federal interest in the mineral estate from the Secretary).

New subsection 9(b)(4) limits the acreage a person can cover by notices of intention to 6400 acres in any one state and 1280 acres belonging to a single surface owner.

New subsection 9(c) applies to activities which may cause significant surface disturbance. It provides that, except for prospecting under the provisions of subsection 9(b), no one can conduct mineral exploration or development activities on Stock Raising Homestead lands without surface owner consent or the Secretary's authorization.

S. 1908 and H.R. 737 specify prerequisites to obtain the authorization of the Secretary and standards which apply. These requirements include posting a bond to guarantee reclamation, compensating the surface owner for loss or impairment of surface use, a satisfactory plan of operations and payment of a fee to the surface owner for use of the lands.

The bills would also authorize the award of treble damages in court suits brought for certain damages or losses suffered by the surface owner, arising from mineral exploration and development activity which does not comply with a notice or approved plan of operations.

H.R. 737 includes a provision in new subsection (d)(1) authorizing the Secretary to convey the United States' interest, including mineral interests, in Stock Raising Homestead lands to the surface owner pursuant to section 209 of FLPMA, but without the necessity to make the findings concerning mineral values required by section 209. S. 1908 has no correspoading provision.

There are several other differences between the bills which I will address in my comments on specific sections.

Regulations to implement the proposed legislation would have to be promulgated within 180 days after enactment of the Act.

We have several recommendations for amendments.

PERIOD FOR PROSPECTING

New subsection 9(b)(1) would provide, in part, that only prospecting activities causing minimal surface disturbance would be permitted after the filing of a notice of intention to locate a claim and surface owner notification. The bills specify types of activities that are not permitted. Only reconnaissance geologic exploration and claim staking could take place during the notice period.

The bills do not provide for any activities to take place after this reconnaissance exploration, should there be a significant time lapse between the end of such exploration and obtaining the authorizations required under subsection 9(c) for further mining activity.

The possibility exists that a claimant would not be able to maintain his mining claim during this potential interim period. This is because he would be unable to perform work necessary to comply with the annual assessment requirements of the Mining Law of 1872 and of the Federal Land Policy and Management Act.

To address and remedy this issue the bills should be amended to require the payment of a $100 annual holding fee in lieu of the assessment requirement in the Mining Law. We note the President's 1991 budget proposes such a change.

New section 9(b)(1) would define the "authorized prospecting period" as beginning 10 days after a notice of prospecting is provided the surface owner, and expiring 60 days after the filing of the notice of intention to locate a claim. The result is a 50-day prospecting period during which no one else could establish rights.

This time period is often too short to complete the tasks of exploring for mineral deposits, identifying a discovery, surveying mining claims, staking monuments, and filing location notices with the Secretary. We suggest that the authorized prospecting period be expanded to 120 days, or that a provision be added to authorize an extension of time for additional work, without a break in the protective effect of the notice.

ACREAGE LIMITATIONS

New subsection 9(b)(4) contains acreage limitations on areas covered by the notice of intention. Due to the nature of some mineral deposits and the potential for disruptive claims by several claimants, the acreage limitation could significantly reduce a mining company's incentive to invest money in a costly exploration program. For this reason, we recommend deletion of the acreage limitations.

BONDING

New subsection 9(c)(2)(A) requires a bond, or other type of financial guarantee, before the Secretary authorizes mineral exploration or development activities. The bond is based on reclamation costs, damages to crops or tangible improvements of the surface owner, and loss of income by the surface owner. Paragraph (c)(2)(B) requires a plan that would provide for advance payment of a surface use fee to the owner. The use fee would be established by the Secretary and would be based on the amount of acreage involved and the degree of potential disruption of existing surface uses, including loss of income to the surface owner due to loss or impairment of existing surface uses for the duration of the mineral activities. The scope of the bonding requirement is not clear as to the time period covered. The use fee would take into account acreages involved and the degree of disruption, including loss of income to the surface owner, due to impairment of existing surface

uses, and would be paid in advance. For these reasons, we believe the bond need not insure against loss of use during the period of mineral development. We suggest that the bond cover only loss of use after operations have ceased and reclamation is complete.

The bond covers the potential loss of income by the surface owner due to loss or impairment of existing grazing or other uses. This amount is open-ended and could be extremely difficult for the Secretary to determine. Further, under subsection 9(c)(3), the surface owner may bring action in the United States District Court for treble damages for loss of income. As discussed later, we do not believe treble damages are warranted but do favor the provision for a court remedy. Because of these other remedies, we suggest dropping or limiting the loss of income calculation as part of the bond amount.

COMPENSATION FOR LOSS OF INCOME

We are concerned that the provisions for compensation for loss of income mentioned in the paragraphs on bonding, surface use fees, and compensation for damages may be excessive. In several areas of the country, Stock Raising Homestead Act lands are no longer being used for grazing livestock in spite of the intention in the legislation that these lands be used for grazing and raising forage crops. In some areas, like the foothills of the Sierra Nevada in California, the lands have been sold and subdivided into housing tracts. There is potential for other non-agricultural uses of the surface, such as shopping centers or other commercial developments. We do not believe the

prospective mineral developer should be required to compensate a surface owner for potential land speculation not contemplaed by the Stock Raising Homestead Act. We suggest that "loss of income from existing surface uses" be changed to "loss of income from agricultural uses." This would reflect the intent of Congress in enacting the Stock Raising Homestead Act.

LAWSUITS

New subsection (9)(c)(3) authorizes the surface owner to bring an action in a United States District Court against a mine operator for loss of income from actions taken without the surface owner's consent, or for failure to comply with the terms and conditions of a plan. Treble damages could be awarded. Treble damages may also be sought for damages and loss of income caused during prospecting activities. Moreover, these damages could be awarded without any finding of intent.

We agree that the surface owner should be compensated for damages caused by unapproved prospecting and mining. However, we believe treble damages are excessive especially without any finding of intent. The surface owner should only be entitled to recover damages for what is actually destroyed or lost and that the bills should be amended accordingly.

In addition, we note that this subsection does not make clear that the surface owner may sue only the mineral claimant or operator. Because the Federal Government should not be held liable for damages caused as a result of mineral activity, this section should be amended to make it clear that no Federal liability exists.

REGULATIONS

Subsection 1(c) of S. 1908 and H.R. 737 requires the Secretary to promulgate regulations to implement the new authorities vested in him within 180 days of enactment of this Act. Our experience with regulations has shown that the initial drafting of the regulations, soliciting public comments, and approving draft and final regulations would be very difficult to complete within 180 days. Usually, regulations of this nature require at least 1 year to promulgate.

We urge amendment to incorporate a more realistic timeframe.

We note several areas of difference between S. 1908 and H.R. 737. We prefer the language of S. 1908 in each of these instances. If H.R. 737 is to be enacted, we recommend some additional amendments to bring it into conformity with S. 1908.

New subsection 9(b)(2)(B) of H.R. 737 should include "prospecting for minerals" as well as locating a claim. This simply clarifies the activity both bills contemplate.

New subsections (9)(c)(2)(A), (9)(c)(2)(B) and 9(c)(3)(B) of H.R. 737 should be clarified by including language to specifically cover "production activities." This would clarify inclusion of production as distinct from the term "development".

In subsection (9)(c)(2)(B) of H.R. 737, in the provision concerning the payment of a surface user fee, the loss of income to the surface owner due to loss or impairment of the existing surface should be limited to loss of use "for the duration" of the activities. Potential loss of use after completion of operations would be difficult to evaluate prior to development. Therefore, we believe the provisions requiring the bond to cover loss of use after activities have ceased is sufficient to protect the surface owner.

We strongly urge deletion from H.R. 737 of new subsection 9(d) which relaxes the requirements in section 209 of FLPMA for conveyance of mineral interests or other interests in Stock Raising Homestead lands to benefit surface owners.

Under FLPMA, conveyances of the mineral interests can take place only if the Secretary finds that there are no known mineral values in the land or that the mineral reservation is interfering with appropriate nonmineral development that constitutes a more beneficial use than mineral development. These criteria were enacted after many years of experience and consideration of competing interests. We continue to believe their application to all lands covered by section 209 is in the public interest and is necessary to prevent a windfall effect. We find no justification for a different approach for surface owners of one category of lands.

Section 9(d) also requires the Secretary to take actions necessary to simplify the procedures contained in section 209(c) of FLPMA for conveyance of the mineral rights to the surface owner. Our regulations in 43 CFR 2720 were

adopted to provide for such conveyances while assuring protection of the public interest, after opportunity for public comment. As with all of our regulations, they are subject to a periodic review and reevaluation process. We will be happy to reexamine them within this framework. However, we do not believe it is necessary to include this requirement in legislation.

Thank you for the chance to present our recommendations. This concludes my statement. I will be happy to answer questions.

Senator BINGAMAN. Thank you for the thorough review that you made of the proposed legislation. I do not have questions of you. When our other witnesses come forward, I would like to ask their reaction to some of your suggested amendments. But at this time, I do not have additional questions to present to you. Thank you very much for being here today. We appreciate it.

Mr. ODEN. Thank you, Senator.

Senator BINGAMAN. Our other witness on this legislation is Mr. Bud Eppers, who is the Chairman of the Public Lands Committee of the National Cattlemen's Association in Washington and also President of the New Mexico Cattle Growers Association. Please come forward, Bud. Also testifying this issue are Charles Roybal, Executive Director of the New Mexico Mining Association, speaking on behalf of the association and on behalf of the American Mining Congress and Mr. Dennis Stolte, who is the Assistant Director of National Affairs for the American Farm Bureau Federation.

Why don't we go ahead and hear from you in that order? Bud, if you would go ahead with any statement that you have. I would say to all of the witnesses, we will, of course, take your written statements and make them part of the record. If you would want to summarize your basic position on the legislation, I think that would be most useful.

STATEMENT OF BUD EPPERS, ON BEHALF OF THE NATIONAL CATTLEMEN'S ASSOCIATION, COUNCIL, AND NEW MEXICO CATTLE GROWERS ASSOCIATION

Mr. EPPERS. Thank you, Mr. Chairman, Senator Bingaman. It is, indeed, a pleasure to be here to testify before this committee and on behalf of S. 1908 and H.R. 737.

My statement is not that long, Senator, and I would appreciate it——

Senator BINGAMAN. If you would like to go through it, just go right ahead.

Mr. EPPERS. Mr. Chairman, my name is Bud Eppers. I am President of the New Mexico Cattle Growers Association, Chairman of the National Cattlemen's Association's Public Lands Committee and immediate past President of the Public Lands Council. I raise cattle and sheep on my ranch just outside of Roswell, New Mexico.

I speak today on behalf of the New Mexico Cattle Growers Association, the National Cattlemen's Association and the Public Lands Council in enthusiastic support of S. 1908 and H.R. 737 to amend the Stock Raising Homestead Act of 1916. This legislation will provide seriously needed protection for the property rights of thousands of ranchers in the west. The New Mexico Cattle Growers, NCA and the Public Lands Council extend our appreciation to you, Senator Bingaman, for introducing this bill and to Representative Lehman of California for his longtime efforts on H.R. 737, which has already passed the House.

The problem this legislation would correct is clear-cut. Split estates in which surface ownership is held by one party and subsurface mineral ownership is held by another, in this case by the Federal Government. As you know, the Stock Raising Homestead Act of 1916 created 70 million acres of split estate land, land predomi-

nantly used for livestock grazing in the west. In New Mexico, we have 15 million acres of Stock Raising Homestead land. In western states, this split estate situation has caused serious, costly disruption of livestock production.

Under the current law, miners and prospectors can and certainly have come on our ranches without any prior notice and engaged in mining activity which seriously damaged the surface of the land, destroyed valuable forage, and which hurt the quality and quantity of essential water available to our livestock. The affected rancher has had no recourse except the courts for any financial compensation or reclamation for the damage of his property. The 1916 act does provide some compensation for crop and income loss, but provides nothing for the grazing and water loss even though the majority of the Stock Raising Homestead property is used for cattle and sheep production and not for row crops.

The income losses and reclamation costs for a rancher can be substantial. Livestock producers operate with a tight margin between profit and loss. A disruption to the operation in one year can threaten overall profitability and continued liability of the ranching operation.

Cattlemen do not normally request new laws to solve our problems. For years we have sought a non-legislative remedy for this split estate problem through discussions with the Federal agencies involved, both in Washington, D.C. and in state and local offices. We have been repeatedly told by these officials that there is no administrative solution to this problem. So, we fully believe that this legislation is the only really viable way of correcting the situation.

S. 1908 and H.R. 737 offer a good solution. It in no way prevents mining or prospecting, but only requires it to respect the needs and rights of the surface owner. S. 1908 and H.R. 737 address our concerns in the following manner: by requiring prior notice to surface owners of intent to begin mining or prospecting; by requiring a bond to insure a means of reclamation and financial compensation for damage or income loss; and perhaps most importantly, by requiring a negotiated surface use agreement for a plan of operations so that the surface owner is aware of and can participate in a determination of the way in which his property will be treated.

These amendments also make it easier for the surface owner to purchase the subsurface mineral rights. While this provision—and we are speaking of the amendment in H.R. 737—does not allow the surface owner to obtain the mineral interest at a cost below market value, it greatly simplifies the current procedures.

We strongly support inclusion of the provisions in S. 1908 as well. We believe these provisions will significantly help rectify the problem that split estate ownership has caused so many ranchers. We do not feel we are asking for anything more than that the legitimate rights of the surface owner be respected. In fact, legal protection for notice, compensation, and a negotiated agreement is given to the Federal Government, states and counties. We only ask that the same be given to the individual surface owner.

This split estate issue has long been a problem for western ranchers and the National Cattlemen's Association. We are extremely grateful that you have recognized the problem and proposed such a solid solution to it. Cattle producers usually want less

laws and regulations, not more. This amendment to the Stock Raising Homestead Act is an exception, an addition to a law we would enthusiastically welcome. We like to call this amendment the Ranchers Rights Bill and we would be glad to have it.

I ask the members of this subcommittee for their support of this needed legislation, and I again thank you, Senator Bingaman, for your initiative in the Senate and Representative Lehman for his hard work on this issue in the House. Thank you.

Senator BINGAMAN. Thank you very much.

Let me call on Mr. Stolte at this point to make any statement he has.

STATEMENT OF DENNIS C. STOLTE, ASSISTANT DIRECTOR, NATIONAL AFFAIRS DIVISION, AMERICAN FARM BUREAU FEDERATION

Mr. STOLTE. Thank you, Mr. Chairman. My statement also is very short. If I may, I would like to read it.

I am Dennis Stolte, Assistant Director of National Affairs for the American Farm Bureau Federation, the Nation's largest organization of farmers and ranchers.

We are pleased to have this opportunity to express our support for S. 1908. We are especially appreciative of the efforts of Chairman Bingaman in sponsoring and holding hearings on this important legislation. We would also like to extend our gratitude to Representative Richard Lehman of California whose efforts in the House of Representatives have resulted in the approval of H.R. 737, the House companion bill.

Creation of split estates by the Stock Raising Homestead Act of 1916 brought with it inherent conflicts between owners of split estates, the farmers and ranchers who own the surface rights, and the mining interests who seek development of the minerals below the surface. Although the Homestead Act sought to develop both the surface and the mineral interests in the most efficient manner, surface owners have felt that their property interests are being ignored at the expense of mineral claimants. With over 70 million acres patented under the act, you can see that the potential for problems is widespread.

S. 1908 identifies the conflicts between split estate owners and seeks to resolve them in a manner that is fair and equitable to all concerned and that is consistent with the intent of the original act. The bill recognizes the basic principle that these lands can best be used if the surface owner and the mineral owner respect one another's rights.

For example, a common courtesy, when one enters the land of another, is to notify him that he is coming. This, however, has often not been the case with respect to mineral developers. S. 1908 would require at least a 10 day notice of intent to enter for both exploration and development activities. Such a notice would permit the surface owner to be prepared for entry and would cause no undue hardship on the mineral claimant.

Another conflict that often arises on split estate lands is damage to the surface owner's lands during the course of the mineral exploration and development. The damages can include lost grazing

or lost crops or damages to surface improvements, such as water resources, fences and structures which are necessary for the surface owner to make use of his property.

Again, compensation for damages is a common courtesy, but landowners are often forced into expensive litigation to recover these damages from mineral developers. The bill provides a fair and efficient mechanism for resolving these claims through requiring the posting of a surety bond.

Many of the conflicts between the surface owners and mineral owners could also be resolved if both parties would agree in advance on a plan of development that would allow the developer to accomplish his purposes in a manner that would be least intrusive to the operations of the surface owner. An agreed upon plan would also benefit the surface owner by minimizing disruptions and allowing him to utilize his land to the greatest extent. The same plan would benefit the mineral developer by reducing potential claims for damages and by increasing landowner cooperation. S. 1908 facilitates this cooperative relationship by providing the landowner an opportunity to comment on the development of the plan before it is finalized.

We recommend one additional provision be included in S. 1908. This provision, contained in H.R. 737, would provide simplified procedures through which surface owners could acquire rights to underlying minerals at fair market value. Under current law, it is very difficult for surface owners to acquire these mineral rights. We urge that S. 1908 be amended to include this provision.

S. 1908 provides fair and reasonable solutions to serious problems faced by owners of split estate lands. It does so in a manner that does not diminish the public interest in federally retained mineral rights and in a manner that does not unduly burden mining activities. It seeks to foster communication and cooperation between both surface owners and mineral owners, a situation in which both split estate owners could be winners.

We strongly urge your favorable consideration of S. 1908.

Thank you.

Senator BINGAMAN. Thank you, Mr. Stolte. We appreciate your being here today.

Charles Roybal is representing the mining industry. We are glad to have you here.

STATEMENT OF CHARLES ROYBAL, EXECUTIVE DIRECTOR, NEW MEXICO MINING ASSOCIATION, ON BEHALF OF THE AMERICAN MINING CONGRESS

Mr. ROYBAL. Thank you, Senator. It is good to be here on behalf of both the American Mining Congress and the New Mexico Mining Association.

Senator, the association has prepared not only comments, but also specific revisions to the bill which are attached to our comments. I will attempt to hit the highlights in our comments and get to some of the specific revisions which we have suggested.

Mr. Chairman, the American Mining Congress and the New Mexico Mining Association believe that the Stock Raising Homestead Act has generally worked well since its inception in 1916 by

allowing for the exploration and development of minerals located on Stock Raising Homestead Act lands where the surface was patented for ranching purposes.

We acknowledge that lack of notification to the surface owner has in some instances created a strained relationship between ranching and mining interests. As a means to minimize the occurrence of these isolated problems, the New Mexico Mining Association and the American Mining Congress support some of the provisions contained in S. 1908 and its House-passed companion, H.R. 737.

These bills require either an agreement between the surface owner and miner or the approval of a plan of operations by the Secretary of the Interior that will allow for orderly and responsible mineral exploration and development while protecting the interests of the surface owners. AMC and the New Mexico Mining Association support this concept.

However, there are some features contained in the two mentioned bills that we believe could cause serious and probably unintended problems. In this statement we propose a few specific changes and clarifications to alleviate those problems. Specific proposed amendatory language again is attached to the statement.

S. 1908 and the House-passed H.R. 737 contain similar language. However, one major difference between the two bills is that subsection (d)(1) of H.R. 737 would allow the conveyance of mineral rights to surface owners without complying with the provisions of section 209 of FLPMA. Congress included these provisions in FLPMA after careful consideration, and no valid reason has been established for these principles to be repealed.

Addressing S. 1908, the first specific area of concern occurs in subsection (b) (1) and (2) that require a notice to be provided to the surface owner prior to conducting prospecting activities. Beginning 10 days after the notice is provided and during the next 50 days, the person filing the notice has the exclusive right to locate a mining claim and conduct prospecting.

However, during this 60 day period, the type of prospecting allowed without mechanical earth-moving equipment would not likely produce a mineral discovery to protect the land position of the locator. If a mineral discovery has not been made by the end of the 60 day period, the land would then become available to location by the surface owner who would be allowed to use mechanical equipment to make a mineral discovery, and the land would also be available for location by anyone else. All of this could occur notwithstanding the fact that the person initially providing the notice has pending before the Secretary of the Interior a plan of operations to allow that person to use mechanical equipment to make a mineral discovery and protect his land position. This is a serious problem which would be alleviated by a simple amendment we have proposed to subsection (b)(2).

During the 60 day period following the notice, subsection (b)(2) provides that no person may acquire any interest in the portion of the lands pursuant to section 209 of FLPMA. Although we support the intent of this provision, it does not accomplish the purpose intended. Therefore, we have proposed another amendment to that provision to allow its intended purpose to be carried out.

The provision in paragraph 2 of subsection (c), that "the Secretary may authorize a person to conduct mineral exploration and development and production activities" would provide the Secretary with a discretion to prohibit mineral activities on any or all land subject to this bill. We have proposed modifications to these provisions that would require the Secretary to permit these mineral activities if the requirements of bonding and plans of operations are met.

Paragraphs (2) (A) and (B) of the bill provide that the person proposing to conduct mineral activities must post a surety bond or other financial guarantee and that the conditions of the plan of operations shall at a minimum require "reclamation of the surface". The term "reclamation" has no certain meaning and there are no standards in this bill to define its meaning. We believe that the overall purpose of this bill is to prevent avoidable surface damage and to compensate the surface owner for damage which is unavoidable. Therefore, we have proposed that the standard established under FLPMA minimizing surface damage, rather than restoring lands to pre-mining conditions, be incorporated in this legislation.

The last part of subsection (c)(2)(B) states that the Secretary shall provide the proposed plan to the surface owner at least 60 days before the plan is approved and allows the surface owner to submit comments on the recommended plan during the 60 day period. We propose that the surface owner be given 30 days to review and comment on the proposed plan and that the Secretary be limited to 60 days to either approve or disapprove a proposed plan unless exceptional circumstances require a greater period of time.

Provisions in subsection (c)(3) relating to treble damages for substantial failure to comply with a plan of operations are extreme. Further, the language is not clear on what type of damages are recoverable. Again, we have provided specific language we hope the committee will consider.

Mr. Chairman, this completes my statement. I will be pleased to answer questions.

And again, the American Mining Congress and the New Mexico Mining Association support the concepts contained in this bill, and we are happy to be here for that purpose.

[The prepared statement of Mr. Roybal follows:]

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STATEMENT OF

NEW MEXICO MINING ASSOCIATION AND

THE AMERICAN MINING CONGRESS

ON

S. 1908 AND H.R. 737

TO AMEND THE STOCK RAISING HOMESTEAD ACT

BEFORE THE

SUBCOMMITTEE ON MINERAL RESOURCES DEVELOPMENT AND PRODUCTION

COMMITTEE ON ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

March 9, 1990

by

CHARLES ROYBAL

EXECUTIVE DIRECTOR

NEW MEXICO MINING ASSOCIATION

The American Mining Congress (AMC) and the New Mexico Mining Association (NMMA) welcome this opportunity to present their views and comments on S.1908 and H.R.737, legislation to amend the Stock Raising Homestead Act of 1916 to address activities involving locatable minerals subject to claim under the 1872 Mining Law.

The New Mexico Mining Association is a state trade association that represents the mining industry in the state of New Mexico. Founded in 1939, the NMMA currently represents 26 mining companies and 400 individual members who produce such commodities as coal, copper, potash, uranium, molybdenum, perlite and building materials.

AMC is an industry association that encompasses (1) producers of most of America's metals, coal and industrial and agricultural minerals, (2) manufacturers of mining and mineral processing machinery, equipment and supplies, and (3) engineering and consulting firms and financial institutions that serve the mining industry.

The AMC and NMMA believe that the Stock Raising Homestead Act has generally worked well since its inception in 1916 by allowing for the exploration and development of minerals located on Stock Raising Homestead Act lands where the surface was patented for ranching purposes. Section 9 of this Act requires that all surface patents be issued with a reservation of the

minerals to the United States. Under this split estate situation, any qualified person who desires to prospect for and develop minerals on Stock Raising Homestead Act lands may do so.

Lack of notification to the surface owner has in some isolated instances created a strained relationship between ranching and mining interests. As a means to minimize the occurrence of these isolated problems, NMMA and AMC support some of the provisions contained in S.1908 and its House-passed companion, H.R.737.

These bills require either an agreement between the surface owner and miner or the approval of operations by the Secretary of the Interior that will allow for orderly and responsible mineral exploration and development while protecting the interests of surface owners. AMC and NMMA support this concept.

S.1908 and H.R.737 are of major significance to the mining industry because this legislation would affect Mining Law activities on approximately 70 million acres of public lands where approximately 17,000 unpatented mining claims are presently recorded, with the majority of claims being in Arizona, California, Colorado and Wyoming. The legislation requires the mineral prospector or developer to obtain the consent of the surface owner to carry out mineral activities or obtain the approval of the Secretary of the Interior of a plan of operations

providing for reimbursement to the surface owner and for minimizing damages to the surface and improvements. This approach is not objectionable, but there are several features of the bill that we believe would cause serious and probably unintended problems. In this statement NMMA and AMC propose a few specific changes and clarifications to alleviate those problems. Specific proposed amendatory language is attached to this statement.

S.1908 and the House-passed H.R.737 contain similar language. However, a major difference between the two bills is that subsection (d)(1) of H.R.737 would allow the conveyance of mineral rights to surface owners without complying with the provisions of Section 209 of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. Sec. 1719). Those mineral conveyance provisions of FLPMA require the surface owner to show that there are no mineral values present or that an existing or planned surface use would be more beneficial than mineral development. FLPMA also requires the surface owner to pay for the administrative costs of those determinations the same as mineral developers would be required to pay the administrative costs under S.1908 and H.R.737. Congress included these provisions in FLPMA after careful consideration and no valid reason has been established for these principles to be repealed by this legislation.

The first area of specific concern with S.1908 occurs in subsections (b)(1) and (2) (on pages 2 and 3) that require a notice to be provided to the surface owner prior to conducting prospecting activities. Beginning ten days after the notice is provided and during the next 50-days, the person filing the notice has the exclusive right to locate a mining claim and conduct prospecting. However, during this 60-day period, the type of prospecting allowed (without mechanical earth moving equipment) would not likely produce a mineral discovery to protect the land position of the locator. If a mineral discovery has not been made by the end of the 60-day period, the land would then become available to location by the surface owner (who would be allowed to use mechanical equipment to make a mineral discovery) and the land would be available for location by anyone else. All of this could occur notwithstanding the fact that the person initially providing the notice has pending before the Secretary of the Interior a plan of operations to allow that person to use mechanical equipment to make a mineral discovery and protect his land position. This is a serious problem, which would be alleviated by a simple amendment we have proposed to subsection (b)(2).

During the 60-day period following the notice, subsection (b)(2) provides that no person may acquire any interest in the portion of the lands pursuant to Section 209 of FLPMA. Although we support the intent of this provision, it does not accomplish

the purpose intended. Under the present regulations for the conveyance of reserved mineral interests, the publication in the Federal Register of a notice of filing the application for such a conveyance segregates the mineral interests and prohibits the location of mining claims (43 C.F.R. Section 2720.1-1(b)). This would defeat the purpose of allowing the person who provided the notice to locate mining claims. Therefore, we have proposed an amendment to that provision to allow its intended purpose to be carried out.

The provision in paragraph (2) of subsection (c) (lines 1-3 on page 6) that "the Secretary may authorize a person to conduct mineral exploration development and production activities" would provide the Secretary with the discretion to prohibit mineral activities on any or all land subject to this bill. This would require the Secretary to intrude into philosophic disputes over the surface use of lands, which the United States does not own. If a surface owner has actually contemplated a surface use of lands, which would be more beneficial than mineral development, that surface owner may proceed to acquire the mineral interest under Section 209 of FLPMA. The denial of surface use for mineral activities should not be left to the time when sufficient mineral interest is indicated to cause a potential mineral explorationist or developer to follow the procedures under this bill to determine the mineral value of that land. Therefore, we have proposed modifications to these provisions that would

require the Secretary to permit these mineral activities if the requirements of bonding and plans of operations are met.

Paragraphs (2)(A) and (B) on pages 6 and 7 of the bill provide that the person proposing to conduct mineral activities must post a surety bond or other financial guaranty and that the conditions of the plan of operations shall at a minimum require "reclamation of the surface." The term "reclamation" has no certain meaning and there are no standards in this bill to define its meaning. In the context of mining, that term is generally thought to mean that repairs will be made to mining disturbed lands to the extent economically and technologically practicable in view of the kinds of disturbances that are unavoidable if mining activities are to occur. However, the Report of the House Committee on Interior and Insular Affairs expresses the intent that "reclamation" in H.R.737 shall mean "the full restoration of the land to a level capable of sustaining its preexisting uses, be it ranching or farming" (H.R. Rep. No. 233, 101st Cong. 1st sess. (1989), p.10). This would completely prohibit most mining operations on the lands subject to this legislation, which we had believed was not the purpose of this bill. We believe that the overall purposes of this bill were to prevent avoidable surface damage and to compensate the surface owner for that damage, which is unavoidable. Therefore, we have proposed that the precedent established under FLPMA to minimize surface damage, rather than to restore lands to premining conditions, be incorporated in this

legislation.

Subsection (c)(2)(B) (lines 12-25 on page 7) requires submission of a plan of operations that provides for the surface owner to be paid a fee established by the Secretary. We believe that the surface use fee should not exceed the fair market value of the use of the surface to be made by the miner.

The last part of subsection (c)(2)(B) (on page 8) provides that the Secretary shall provide the proposed plan to the surface owner at least 60-days before the plan is approved and allows a surface owner to submit comments on the recommended plan during such 60-day period. We believe this is an excessive amount of time for a surface owner to review and comment on the plan. Further, there is no limitation on the time the Secretary may take to consider and approve or disapprove a plan. In many parts of the United States, the timing for authorizations to conduct field operations is critical and a single delay can mean the loss of an entire year in field operations. Therefore, we propose that the surface owner be given 30-days to review and comment on a proposed plan and that the Secretary be limited to 60-days to either approve or disapprove a proposed plan unless exceptional circumstances require a greater period of time.

Provisions in subsection (c)(3) relating to treble damages for substantial failure to comply with a plan of operations are

extreme. Further, the language is not clear on what type of damages are recoverable. Subsection (c)(3) appears to be a broad grant of the right to a surface owner to recover a treble award for all damage to the surface even for such damage that had been authorized in the plan of operations. Frivolous litigation should not be encouraged in our society, which is already overly litigious.

Mr. Chairman, this completes my statement. I will be pleased to answer questions.

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President

SPECIFIC REVISIONS TO S. 1908
A BILL TO AMEND THE STOCK RAISING HOMESTEAD ACT

RECOMMENDED BY

THE AMERICAN MINING CONGRESS
AND
THE NEW MEXICO MINING ASSOCIATION

1. Before the period at the end of line 2, page 4, add the following:

> "...and no application by any person for such acquisition shall cause such lands to be segregated from mineral entry by the person filing the notice under this paragraph."

2. At the beginning of line 3, page 4, add the following:

> "If, within the said sixty-day period, the person who filed a notice under this paragraph files a plan of operations under subsection (c), the said sixty-day period shall be extended for a period ending sixty days following the approval or disapproval of the plan of operations by the Secretary."

3. In line 2, page 6, change the word "may" to "shall" and change lines 5 and 6 on page 6 to read:

> "...surface owner thereof upon satisfaction of the following conditions by the person proposing to conduct mineral exploration, development or production activities."

4. Insert the following after the word "surface" after it first appears in line 14, page 6, and after the word "surface" in line 8, page 7:

> "...in accordance with the standards set forth in the last sentence of paragraph (b), Section 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. Sec. 1732 (b)) and the regulations promulgated thereunder."

5. In lines 3 and 4, page 7, strike the words "satisfactory to the Secretary and..."

6. Revise line 6, page 7 to read:

> "...[con]ditions as the Secretary determines are necessary to prevent unnecessary or undue degradation of the lands or improvements thereon."

7. In line 21, page 7, change the phrase "taking into account" to read:

> "...based upon the fair market value of..."

8. In lines 3 and 7, page 8, change the word "sixty" to "thirty."

9. Add the following at the end of line 8, page 8:

> "Unless exceptional circumstances require a greater period of time, the Secretary shall, within sixty days after the plan has been submitted to the Secretary, either approve the plan of operations or advise the person submitting the plan what modifications will be required for approval of the plan."

10. Change line 12, page 9 to read:

> "...award, damages plus costs for the willful failure of the operator to comply with the plan of operations, but in no event should the award exceed double damages."

11. In line 19, page 9, delete the word "treble" and after the word "damages" insert:

> "...plus costs not to exceed double damages..."

Senator BINGAMAN. Thank you very much, Charles, for your testimony.

Before I ask any questions, let me call on Senator Domenici who has come in to make any statement he would like at this point.

STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM NEW MEXICO

Senator DOMENICI. Thank you, Mr. Chairman.

I just wanted to first thank the two New Mexico witnesses for coming up here, Mr. Eppers and Mr. Roybal. I apologize for not being here sooner. I have read your statements, and I have a couple of questions.

Let me just say generally it seems to me that the purpose of this legislation and the goals and intentions are good ones. I have not yet heard or read anything that indicates that the conflicting interests that are attempted to be more reconciled than currently exists do not think it is a good goal and a good purpose. I think with that there is unanimity. I think when we start with that, we should have optimism that we can get a piece of legislation that will work better than what is working now. And I think that is why we are here and that is the purpose of it.

I appreciate your constructive remarks and look forward to a couple of questions of each of you and thank the Chairman for accommodating me.

Senator BINGAMAN. Let me just ask Mr. Eppers or Mr. Stolte, either one. Did you get a chance to hear the recommendations that the Bureau of Land Management made here today or suggested changes with regard to the treble damage provisions of the bill? They objected to those and had questions on the acreage limitations, the prospecting period. Are you in agreement with the Bureau of Land Management on those or in disagreement? Or have you had a chance to look at them yet enough to really respond on that?

Mr. EPPERS. Mr. Chairman, we certainly have not had time to review the recommended amendments by the Bureau of Land Management. We find it somewhat unusual for this bill to have already gone through the House without the opposition that has been expressed here today or the concern of the amendments.

And I would also like to submit for the record the testimony that was presented to the House committee by various members of our organizations of their concerns and support for H.R. 737.

I do not have any comment right now other than I do not think that we are asking for anything unreasonable in this bill, and I would certainly hope that it would have to be amended or held up because we thought we had something worked out that was agreeable with the mining interests and all parties involved and affected coming into this hearing.

[The material follows:]

MAY 25 '90 15:32 NCADC P.2

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March 28, 1990

The Honorable Jeff Bingaman, Chairman
Mineral Resources Development and Production Subcommittee
Senate Energy and Natural Resources Committee
362 Senate Dirksen Office Building
Washington, D.C. 20510

Dear Senator Bingaman:

As you requested at the March 9 hearing on the Stock Raising Homestead Act, we submit comments on proposed changes to S. 1908 and H.R. 737. The comments are made on behalf of the National Cattlemen's Association, Public Lands Council, New Mexico Cattle Growers Association, and the California Cattlemen's Association.

Also enclosed is testimony given at House hearing on H.R. 737 on June 9 in California by Ed Hastey, State Director of the Bureau of Land Management (BLM). As we told you at the March 9 hearing, we had no prior notice of BLM's or American Mining Congress's proposed changes to S. 1908 and H.R. 737. Ed Hastey's testimony gives no indication of such specific changes. Nor did BLM propose any changes before H.R. 737 passed on September 12, 1989 in the House of Representatives. We have been in ongoing communication with the BLM on this issue for years and do not understand why they did not choose to discuss their proposed changes with us before the March 9 hearing.

Cattlemen hardly ever seek legislative solutions to problems. H.R. 737 and S. 1908 are an exception. After years of effort, we believe we have exhausted all possible administrative solutions to split estate ownership. Further we believe that those amendments to the Stock Raising Homestead Act establish a means to avoid potential disputes between surface owners and miners which will itself avoid further intervention with mining activities.

Both private and public land users strongly support this legislation as it passed in the House of Representatives. Years of work and negotiations went in to the passage of H.R. 737. We urge you to so move the Senate bill and we thank you for your efforts on S. 1908.

Sincerely,

Mary Burke, Chairman
Private Lands Committee

Bud Eppers, Chairman
Public Lands Committee

MB/BE:jw

cc: Senator Peter Domenici
Congressman Richard Lehman
John Ross, Executive Vice President, California Cattlemen's Assn.
J. Victor Culberson, Executive Vice President, New Mexico Cattle Growers Assn.
Cy Jamison, Director, Bureau of Land Management
Charles Rayball, Executive Director, New Mexico Mining Assn.

Enclosure

MAY 25 '90 15:33 NCADC

COMMENTS ON TESTIMONY

by Bureau of Land Management
in regard to
S. 1908 and H.R. 737
To Amend the Stock Raising Homestead Act of 1916

Submitted by
National Cattlemen's Association
Public Lands Council
California Cattlemen's Association
New Mexico Cattle Growers Association

The National Cattlemen's Association and the California Cattlemen's Association have worked to protect surface landowner's rights under split estate relative to mineral rights since 1983. The problem was first encountered by one of our members in central California; we have since found that it extends to over 70 million acres in over a dozen states. Simply stated, where the surface use is for livestock grazing no means existed to constrain prospecting and/or mining activity from disrupting that livestock operation.

We attempted to resolve the problem through regulation, and met with the Bureau of Land Management (BLM) several times from 1983 through 1989. The Bureau appeared reluctant to proceed with an administrative or regulatory solution, so we eventually went to Representative Richard Lehman for a legislative remedy (1987). We also met with the American Mining Congress to attempt to resolve their concerns.

Our intent was NOT to impede legitimate mining, nor were we attempting amendments to the 1872 Mining Act. In fact, we consciously avoided modeling our legislation after the stricter law for coal mining -- we only seek remedies to alleviate the disruption caused a surface landowner when mining occurs, as well as providing a reasonable means for surface owners, who are not miners, to acquire full title to the property. Finally, neither H.R. 737 nor S. 1908 applies to the full range of minerals that could be discovered on these split estate lands.

Thus, we are somewhat disturbed by the extent of some of the proposed amendments and more particularly by the announcement of these amendments at this hearing. We had no prior notice of the amendments, even though our record of communicating with the BLM regarding our efforts has been good.

Specific Response

Timeframe under initial exploration and subsequent mining activity (Section 9(b)(1) and 9(c)): We understand the concern and can accept a limited holding period (i.e., not to exceed one year) subject to the proposed holding fee. We are unwilling to grant an interest that is subject to the whim of the miner and the agency to complete the paperwork required for further mining activity. Some time constraint must apply.

Authorized Prospecting period too short (Subsection 9(b)(1)): Again, we appreciate the concern; however, if a mining interest is truly focusing on this land, certainly they should be able to complete their work on a timely basis. We are not prepared to accept language allowing miners to disrupt our livestock operations for extended periods of time.

Acreage limitations too constraining (Subsection 9(b)(4)): We question whether the ability to prospect over ten square miles total and two square miles on any individual surface owner's property is indeed constraining. The testimony appears to represent that a substantial acreage is involved in each state and that mining activity will be effectively blocked; while 70 million acres are involved nationally, the proportion in any state is much smaller and could hardly be a deterrent to significant mining activity. Further, throughout the course of a year, for an active mineral exploration effort, the total could be much larger: land would be released quickly if the mineral value is not significant.

Bond need not cover loss of income during mining activity (Subsection 9(c)(2)(A) and 9(c)(2)(b): The testimony presumes that loss of income can be precisely estimated in advance of mining activity; obviously, that is not the case in most instances of mining activity. Similarly, the surface use fee cannot be precisely estimated. Thus, incorporating loss of income into the bond is reasonable requirement.

Further, we disagree that loss of income cannot be readily calculated. We must now calculate it in a number of situations, including establishing lease rates for private land and in paying a possessory interest tax on public lands.

Compensation for Loss of Income may be excessive (Sections 9(c)(2)(A) and (B) and 9(c)(3)): We vehemently disagree with the line of reasoning in this argument. First, the consequences of the disruption may be significantly greater in the instances cited in the testimony, hence compensation even more important. Second, the statement that "...mineral developers should (not) be required to compensate a surface owner for potential land speculation not contemplated by the Stock Raising Homestead Act..." unreasonably implies that, for mining, nothing should change since the original law. The very fact that we are seeking this legislation is an indication of change. We, too, sometimes wish that we could turn the clock back to the time before the Clean Air and Clean Water Acts and the Endangered Species Act, but we know that we cannot and have taken steps to assure that we meet the terms of those Acts!

Treble damages are excessive (Subsection 9(c)(3)): We certainly disagree with this argument -- treble damages are one means to assure that the required reclamation work is completed and that compensation for loss of income is paid. At a time when concern over cleaning up the sometimes toxic and often pollutant remains of previous generations of mining activity is at a peak, we believe that the burden for clean up and reclamation should rest with the miner! Treble damages are a significant inducement to proper mining activity.

Inadequate time to promulgate regulations (Subsection 1(c)): After seven years of effort to resolve this issue, including five years spent trying to obtain administrative relief, we may be understandably reluctant to accept the argument that 180 days is too short a time to promulgate regulations. However, we are willing to accept a 270 day period as a reasonable compromise.

No justification for allowing conveyance of mineral rights to surface landowners (Subsection 9(d) of H.R. 737): We find it interesting that the agency argues the mining industry should not be held to a greater standard than existed when the Stock Raising Homestead Act was enacted, yet would apply provisions of FLPMA to surface owners. We believe it is good public policy to extend full title to surface landowners without requiring that they become miners. We would like to discuss this point further prior to any amendment.

Review of regulations to expedite transfer of mineral rights to surface landowners is unnecessary: While we appreciate the point raised in the testimony, we must refer to our seven year effort to resolve this problem. Surely there must be an easier way to resolve this infringement upon surface landowner rights. We believe that an express requirement to review the process is in order and justified within the legislation.

MAY 25 '90 15:36 NCRDC P.6

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March 28, 1990

Mr. Daniel Talbot
Special Assistant to the Director
Bureau of Land Management
U.S. Department of the Interior
18th and C Street, N.W.
Washington, D.C. 20240

Dear Dan:

Here are our comments on BLM testimony on the S. 1908 and H.R. 737 given at the March 9 hearing in the Senate. When you have an opportunity to review them, I would like to discuss them with you.

Also enclosed is Ed Hastey's testimony at the hearing in California last June. So you can understand our surprise at the proposed changes we heard for the first time on March 9 before the Senator Bingaman's subcommittee.

I look forward to speaking with you about this in the near future. Thank you for your call about it last week.

Sincerely,

Kathleen Hartnett

Kathleen Hartnett
Associate Director

KH/jw

Enclosure

Senator BINGAMAN. Well, let me just ask if both your organization, Bud, and yours, Mr. Stolte, would have a chance to take the testimony that the BLM has presented today and look at some of those specific amendments that they are recommending, and then perhaps advise the committee and Senator Domenici and myself in writing as to your position on their proposed amendments, I think that would be helpful to us before we had to take action.

Mr. EPPERS. Thank you, Senator. Yes, we would be very glad to do so, and we would get back with you in a timely fashion on this.

Senator BINGAMAN. Let me ask Charles the same thing. Have you had a chance prior to today or today while here to form a position as to where you stand? Obviously, you are in agreement with the BLM on the treble damage proposal, their proposed amendment there, where they disagree with the language. But with regard to the prospecting period and the acreage limitations and all, have you had a chance to really review their proposed amendments there?

Mr. ROYBAL. Senator, our first opportunity was hearing them at this hearing. Many of the themes sounded very familiar actually, and we would be in agreement with most of them. I think one thing that struck me: the holding fee sounded a little excessive.

Senator BINGAMAN. That is that $100 annual fee?

Mr. ROYBAL. Yes. That struck me fairly quickly actually, Senator.

We would appreciate the same opportunity to take their statement and review it and give you something back in writing. But other than that, a lot of their concerns we would share.

Senator BINGAMAN. All right. Let me just ask one other question.

Do you know how extensive the activity is, for example, in our home State of New Mexico, the mining activity or the staking of claims on Stock Raising Homestead land in our state?

Mr. ROYBAL. Senator, in preparation for this hearing, I tried to find out how extensive that was. I am aware that the Stock Raising Homestead Act acreage in New Mexico is fairly extensive. It is, as you pointed out, something in the order of 15.6 million acres or something like that.

In the House report on H.R. 737, they did not note any overlaying. I am not sure if that was just an inadvertent omission. I have heard numbers on the order of 1,500 acres, but I would need to double check that.

Senator BINGAMAN. Well, any more information you could give us on that we would appreciate as well.

Senator Domenici?

Senator DOMENICI. Thank you, Mr. Chairman.

Let me just ask all three of you. All but one of my questions has now been asked, and I would like very much to have the information that Senator Bingaman asked for.

Mr. Roybal did raise an issue that I think deserves at least some attention. He takes the position—well, let me see if I could state what I think he said. I think he said that he would not have any objection to the procedures here so long as he does not find them prejudiced against the person that first found that the site may, indeed, be a mineral laden site. I think that is a fair statement. We surely would not want to engage ourselves in a process which

would so prejudice the person that first made the find, that either the owner, who obviously did not find it himself, or a third party would have an advantage.

Now, did I paraphrase what you said correctly?

Mr. ROYBAL. Very well, Senator. Yes, that is right.

Senator DOMENICI. What do all of you think about that? Mr. Roybal has stated his position. What do you think about that?

Mr. STOLTE. Well, Senator, I believe that clearly the intent of the act was to avoid that from happening. The reason these minerals were reserved in the name of the United States was so that they could be developed by people other than the surface owner. And I think we would have to agree that any process that would bias mineral development in favor of the surface owner would probably be something we would not seek. I think equity is something that we would try to achieve there too.

Senator DOMENICI. Mr. Eppers?

Mr. EPPERS. I would concur with that statement, Senator. I think in no way are we trying to prevent development of our mineral resources under these split estate situations. That was not our intent in supporting this legislation.

Senator DOMENICI. Well, it would seem to me that in a general way, both organizations that you represent would answer the way you did. And I am very pleased that you have because we frequently are put in a position of defending the interests that you all represent, and we usually have to defend them from the standpoint of wanting to maintain productivity and production and opportunity people to capitalize on their own efforts. And that approach has served us reasonably well on the mining and mineral side. Clearly I would not think that either of your organizations would be on the side of making that so difficult that it would not work or prejudicing the entrepreneur or business entity that got the first lick at it under this process.

So, is it fair to say that if we find with our staff—I am just talking about that one aspect—that indeed we can make this fairer and more assured that while we are taking the up-front precautions so that damage is not done, which is what I understand this is all about, and things done without knowledge—I think those must be the two concepts we are working on here—that you would not look unfavorably upon an effort to make it clear that we are not for or prejudicing the person that made the find? Is that a fair statement?

Mr. STOLTE. Yes, it is, sir. I believe that our interests here are protecting the legitimate property rights of the surface owner, which we think have been in some cases ignored. That is our primary objective.

Senator DOMENICI. Mr. Eppers?

Mr. EPPERS. Yes. I concur wholeheartedly with it. There was certainly, as I indicated before, no attempt to give the private landowner exclusive rights over the mineral development or exploration activities, and we just felt like that the private surface owner was entitled to the same protection for his land as the Federal Government was for theirs or any state might be for theirs as well.

Senator DOMENICI. My last one is one that I really do not know and perhaps should. But it does seem that there is some sense of a

bit of surprise about the Bureau of Land Management coming in with its very lengthy list of suggested amendments. What did they do in the House? Does anybody know? Did they not testify?

Senator BINGAMAN. I believe there was a field hearing, but there was no hearing here in Washington where the BLM had the opportunity to present comments. Is that correct, Mr. Oden?

Mr. ODEN. Yes.

Senator DOMENICI. So, you are presenting them essentially from the administration standpoint for the first time in writing here in detail?

Mr. ODEN. Yes, sir.

Senator DOMENICI. Can I ask one more question?

Senator BINGAMAN. Sure.

Senator DOMENICI. How did all this happen? Didn't you all see fit to send something to the House even though there was only a field hearing? Didn't the administration know they were going to mark up and pass a bill?

Senator BINGAMAN. Mr. Oden, you might want to sit at the table so that the court reporter could get your answer.

Mr. ODEN. No, the administration had not set forth their position on the bill previous to this. There was a field hearing. State Director of California, Ed Hastey, testified and just gave some factual information and said that we would be happy to work with the committee and the like in getting a reasonable bill passed.

Senator DOMENICI. Well, it does not make our life any easier doing it this way, does it?

Well, thank you very much. I do not have any other questions.

Senator BINGAMAN. Thank you all very much for testifying.

Is it reasonable to ask that the response or the comments on the suggested amendments that the BLM has made could be received here in a couple of weeks so we could close our hearing record at that time? Is that possible?

Mr. STOLTE. Yes.

Mr. ROYBAL. Yes.

Mr. EPPERS. Yes.

Senator BINGAMAN. All right. Then we will leave the hearing record open for two more weeks for receipt of that information and any other comments or statements that we are given on this legislation.

It is possible that Senator Domenici or I would think of other questions we would submit in writing. I do not know of those at this point.

[The subcommittee received the following:]

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* Immediate Past Chairman
† Honorary

March 19, 1990

The Honorable Jeff Bingaman
Chairman
Subcommittee on Mineral Resources
  Development and Production
Committee on Energy and Natural Resources
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Thank you for the opportunity to testify last week at the hearing on S.1908 and H.R.737, legislation to amend the Stock Raising Homestead Act. At the hearing you asked the American Mining Congress (AMC) to comment in writing on the Bureau of Land Management's (BLM) recommendations for amendments.

AMC agrees with BLM that the language of S.1908 is preferable to H.R.737.

BLM recommends a $100 annual holding fee in lieu of the Mining Law's assessment requirement to protect the land position of the locator following the exploration phase. AMC opposes imposition of a $100 holding fee. The purpose of assessment work and a supposed purpose of a holding fee are to promote diligence in working and holding mining claims. Even that supposed purpose of a holding fee would not be carried out in this case because the claim holder can do nothing but wait for approval of the plan of operations he has submitted. AMC urges adoption of language submitted with its testimony to remedy this problem (amendment #1).

The BLM proposal to extend the exploration period from 50 to 120 days would be some improvement but the same problem would exist at the end of 120 days if a plan of operations has not been approved. That is, if the person providing the notice of intent does not have a plan of operations approved by the end of 120 days, the land would become available for the location of mining claims by others. Again, we urge adoption of AMC amendment #2 to alleviate this problem.

The BLM suggestion to delete acreage limitations in subsection (b) (4) could result in unintended consequences. If there were no limits on areas which could be subject to a notice of intent, opportunists could conceivably blanket the mineral estate of Stock Raising Homestead Act lands of an entire state and freeze the availability of that mineral estate for some period of time. Under the AMC proposal, a land area would be protected from other locations while a plan of operations is being considered but the size of that land area would be limited.

With regard to bonding, BLM suggested: 1) the bond not insure against loss of use during the period of mineral development and cover only loss of use after operations have ceased and reclamation is complete, and 2) dropping or limiting the loss of income calculation during mineral development as part of the bond amount. The apparent reason for BLM's suggestion is that compensation for loss of use and loss of income would be provided by the user fee set forth in subsection (c) (2) (B). This is agreeable to AMC.

With regard to the comments of BLM on treble damages being excessive AMC agrees but prefers adoption of AMC amendments #10 and #11.

AMC agrees with BLM that promulgation of regulations within 180 days after enactment would be difficult.

AMC agrees with the remaining proposals by the BLM set forth on pages 9, 10, and 11 of the BLM statement respecting H.R.737. However, there are two additional issues on which the BLM statement was silent and on which the AMC desires to reemphasize its position. The first arises from the provisions in subsection (c) (2) in both bills providing that the Secretary "may authorize" a person to conduct mineral exploration and development activities on lands subject to the Act. This would provide the Secretary with complete discretionary authority to prohibit mineral activities on any or all of these lands. To our knowledge, such discretionary authority has never been intended by this legislation and AMC urgently requests that its proposal in amendment #3 of its statement be adopted. Second, BLM did not address the intent expressed by House Report 101-233 (page 10) that "reclamation" would mean "full restoration of the land to a level capable of sustaining its preexisting uses." This would absolutely prohibit much mineral exploration and most if not all mineral development and mining on these lands. Such prohibitions have never been intended by this legislation.

We appreciate the opportunity to make these additional comments.

Sincerely,

John A. Knebel
President

Enclosure

Senator BINGAMAN. Thank you all very much. I think this was a useful hearing.

Senator DOMENICI. Mr. Chairman?

Senator BINGAMAN. Yes, Senator Domenici?

Senator DOMENICI. Mr. Roybal, I do not know whether on the issue I raised, which we seem to have accord on the purpose and goals and intentions—I do not have any knowledge that you, on behalf of the mining industry, have submitted specifics on how we might rectify the situation. Did you?

Mr. ROYBAL. Yes, Senator, we did.

Senator DOMENICI. All right. So, we do not need that. We have it. It is just a matter of looking at it.

Mr. ROYBAL. That is right.

Senator DOMENICI. Thank you, Mr. Chairman.

Senator BINGAMAN. Thank you all very much.

The hearing is adjourned.

[Whereupon, at 2:05 p.m., the hearing was adjourned.]

APPENDIX

RESPONSES TO ADDITIONAL QUESTIONS

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

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Honorable Jeff Bingaman
Chairman, Subcommittee on Mineral
Resource Development and Production
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510-6150

Dear Mr. Chairman:

Thank you for your letter of March 12, 1990, in which was presented several additional questions on the Stock-raising Homestead Act relating to the March 9 hearing of your Subcommittee. The following is our response to the questions as presented in the request:

1. Requests: **Provide for the record, the total number of stock raising homestead lands nation-wide, the number of acres per State, and the total number of claims on these lands, both nation-wide and by state.**

Please provide the number of mining operations currently on stock raising homestead lands, by state.

Please provide the numbers of bonds, and their amounts, outstanding on stock raising homestead lands.

Response: According to our Public Land Statistics the number of acres of original stock-raising homestead entries on public lands was 70,362,925 acres. We do not have the number of acres that were actually patented, but we estimate that the number would be close to the number of entries. Since the Bureau of Land Management (BLM) has no responsibility for surface management of private lands patented out of Federal ownership under the Stock-raising Homestead Act, the other statistics requested are our best estimates based on communications with our field offices. Field office estimates indicate a nationwide total of 35,000 mining claims, 56 operations, 31 bonds, and bond amounts totaling $517,500. In cases where mining operations for locatable minerals are identified, but no bond (under 43 CFR 3814) is identified, an agreement with the surface owner may have been established and/or a bond may exist under State law (primarily for reclamation costs).

The following is a list of the requested statistics concerning mining of locatable minerals on Stock-raising Homestead Act lands by BLM State Office jurisdiction:

State	SRHA Lands (Acres)	Mining Claims (Acres)	Number of Operations	No. of Bonds	Bond Amount ($)
AZ	2,985,746	7,000 ±	18	18	481,500
CA	3,423,222	3,000 ±	7	7	21,000
CO	8,405,015	3,000 ±	6	6	15,000
ID	3,563,294	1,500 ±	0	0	
MT, ND, SD	10,741,052	1,500 ±	3	0	
NV	494,637	2,000 ±	0	0	
NM, OK, KS	15,751,047	6,500 ±	0	0	
OR, WA	3,889,434	1,500 ±	2	0	
UT	2,800,709	6,000 ±	0	0	
WY, NE	18,281,026	3,000 ±	20	0	
Other	27,743				
TOTAL	70,362,925	35,000 ±	56	31	517,500

2. Question: **What are the Federal government's current responsibilities for regulation of all phases of mining operations on stock raising homestead act lands?**

Answer: The regulations at 43 CFR 3814, Disposal of Reserved Minerals Under the Stockraising Homestead Act, provide BLM with its responsibilities. Basically, BLM is only responsible for approving and nolding a bond to secure payment for any damages to the surface owner's crops or tangible improvements. A bond is only required if a claimant cannot secure the written consent or waiver of the surface owner, or the two parties cannot reach agreement on payment of damages to crops or other tangible improvements. If either party objects to the decision of the authorized officer, they may appeal to the Director of the BLM.

3. Question: **What is the average length of time required to approve or disapprove a request for conveyance of mineral rights to a surface owner pursuant to Section 209(c) of the Federal Land Policy and Management Act?**

Answer: On the average it takes approximately 18 months to fully process an application for conveyance of the mineral estate.

Question: **Are you committing in your testimony to reviewing your regulations to ensure that the public interest is protected, and that the procedures are simplified to the extent reasonable?**

Answer: Yes, we will re-examine the regulations concerning mineral conveyance.

4. Question: **To what extent are stock raising homestead lands being used for purposes other than agriculture and grazing?**

Answer: Although BLM is not responsible for surface management of lands patented out of Federal ownership under the Stock-raising Homestead Act, we estimate that between 5 and 10 percent of these lands may support land uses other than agriculture and grazing.

Sincerely,

C. J. Jamison

Director